

REQUEST FOR PROPOSALS
North Carolina Department of Public Safety
Request for Proposal #: 19-RFP-014582-WAX

**CONSTRUCTION MANAGEMENT SERVICES FOR
STATE'S HURRICANE RECOVERY PROGRAM**

(Home Rehabilitation, Reconstruction, Replacement, and Elevation)

Date of Issue: February 14, 2019

Proposal Opening Date: February 28, 2019

ISSUING AGENCY: North Carolina Department of Public Safety
USING AGENCY: Office of Recovery and Resiliency

Location & Mailing Address:
3030 Hammond Business Place
Raleigh, NC 27603

Direct all inquiries concerning this RFP to:

Angela Wainright
Purchasing Officer
Email: angela.wainright1@ncdps.gov
Phone: 919-324-6476

Source of Funding: **U.S. Housing & Urban Development**
Community Development Block Grant-Disaster Recovery

SEND ALL PROPOSALS DIRECTLY TO THE ISSUING AGENCY ADDRESS SHOWN ABOVE.

IMPORTANT NOTE: On the front of the sealed package, indicate Offeror's name, the RFP number, and the date for receipt of proposal specified above.

RFPs submitted via facsimile (FAX) machine, telephone, and electronic means, including but not limited to e-mail, in response to this Request for Proposal will not be acceptable. Any changes to the RFP and a summary of all questions submitted and answers (see, *Proposal Questions* at Section 2.4) will be posted on the internet as an Addendum, located under the RFP # listed above.

It is the Offeror's responsibility to assure that all addenda have been reviewed and, if need be, signed and returned.

All proposals shall be delivered to the Issuing Agency physical office location listed above on or before the proposal deadline in order to be considered timely, regardless of the method of delivery. **This is an absolute requirement.** All risk of late arrival due to unanticipated delay—whether delivered by hand, U.S. Postal Service, courier or other delivery service is entirely on the Offeror. It is the sole responsibility of the Offeror to have the proposal physically in this Office by the specified time and date of opening. The time of delivery will be marked on each proposal when received, and any proposal received after the proposal submission deadline will be rejected.


Note that the U.S. Postal Service generally does not deliver mail to specified street address but to the State's Mail Service Center. Offerors are cautioned that proposals sent via U.S. Mail, including Express Mail, may not be delivered by the Mail Service Center to the Issuing Agency's office on the due date in time to meet the proposal deadline. All Offerors are urged to take the possibility of delay into account when submitting a proposal.

For internal State agency processing, including tabulation of proposals in the Interactive Purchasing System (IPS), please provide your company's Federal Employer Identification Number or alternate identification number (e.g. Social Security Number). Pursuant to N.C.G.S. 132-1.10(b) this identification number shall not be released to the public. **This page will be removed and shredded, or otherwise kept confidential,** before the procurement file is made available for public inspection.

**This page is to be filled out and returned with your proposal.
Failure to do so may subject your proposal to rejection.**

Federal ID Number or Social Security Number

Offeror Name

 STATE OF NORTH CAROLINA DEPARTMENT OF PUBLIC SAFETY	
Refer <u>ALL</u> Inquiries regarding this RFP to: Angela Wainright 3030 Hammond Business Place Raleigh, NC 27603	Request for Proposal # 19-RFP-014582-WAX
	Proposals will be publicly opened: February 28, 2019
	Contract Type: Construction Management Services
	Commodity No. and Description: 958-77-Project Management Services
	Using Agency: Office of Recovery and Resiliency
Requisition No.: RQ21801934	

EXECUTION

In compliance with this Request for Proposals, and subject to all the conditions herein, the undersigned Offeror offers and agrees to furnish and deliver any or all items upon which prices are bid, at the prices set opposite each item within the time specified herein. By executing this proposal, the undersigned Offeror certifies that this proposal is submitted competitively and without collusion (G.S. 143-54), that none of its officers, directors, or owners of an unincorporated business entity has been convicted of any violations of Chapter 78A of the General Statutes, the Securities Act of 1933, or the Securities Exchange Act of 1934 (G.S. 143-59.2), and that it is not an ineligible Offeror as set forth in G.S. 143-59.1. False certification is a Class I felony. Furthermore, by executing this proposal, the undersigned certifies to the best of Offeror's knowledge and belief, that it and its principals are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any Federal or State department or agency. As required by G.S. 143-48.5, the undersigned Offeror certifies that it, and each of its sub-Contractors for any Contract awarded as a result of this RFP, complies with the requirements of Article 2 of Chapter 64 of the NC General Statutes, including the requirement for each employer with more than 25 employees in North Carolina to verify the work authorization of its employees through the federal E-Verify system. G.S. 133-32 and Executive Order 24 (2009) prohibit the offer to, or acceptance by, any State Employee associated with the preparing plans, specifications, estimates for public Contract; or awarding or administering public Contracts; or inspecting or supervising delivery of the public Contract of any gift from anyone with a Contract with the State, or from any person seeking to do business with the State. By execution of this response to the RFP, the undersigned certifies, for your entire organization and its employees or agents, that you are not aware that any such gift has been offered, accepted, or promised by any employees of your organization.

Failure to execute/sign proposal prior to submittal shall render proposal invalid and it WILL BE REJECTED. Late proposals cannot be accepted.

OFFEROR:		
STREET ADDRESS:	P.O. BOX:	ZIP:
CITY & STATE & ZIP:	TELEPHONE NUMBER:	TOLL FREE TEL. NO:
PRINCIPAL PLACE OF BUSINESS ADDRESS IF DIFFERENT FROM ABOVE:		
PRINT NAME & TITLE OF PERSON SIGNING ON BEHALF OF OFFEROR:	FAX NUMBER:	
OFFEROR'S AUTHORIZED SIGNATURE:	DATE:	EMAIL:

Offer is valid for at least 90 days from date of proposal opening, unless otherwise stated here: _____ days. After this time, any withdrawal of offer shall be made in writing, effective upon receipt by the agency issuing this RFP.

ACCEPTANCE OF PROPOSAL

If any or all parts of this proposal are accepted by the State of North Carolina, an authorized representative of the North Carolina Department of Public Safety shall affix his/her signature hereto and this document and all provisions of this Request For Proposal along with the Offeror proposal response and the written results of any negotiations shall then constitute the written agreement between the parties. A copy of this acceptance will be forwarded to the successful Offeror(s).

FOR STATE USE ONLY: Offered accepted and Contract awarded this _____ day of _____ 2019, as indicated on the attached certification, by _____ (Authorized Representative of the North Carolina Department of Public Safety)

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1.0 PURPOSE AND BACKGROUND

The North Carolina Office of Recovery and Resiliency (NCORR), a division of the Department of Public Safety (DPS), is soliciting proposals from interested firms to provide construction management services for Community Development Block Grants for Disaster Recovery (CDBG-DR) awarded to the State of North Carolina for any past or future federally declared disasters. The State of North Carolina (the State) has received approximately \$236.5 million in CDBG-DR awards to date for Hurricane Matthew (DR-4285). The State anticipates an additional \$168 million for mitigation projects, and, following Hurricane Florence (DR-4393), North Carolina anticipates additional substantial CDBG-DR awards. To meet the unprecedented challenge of recovering from multiple federally declared disasters, the State has established NCORR to become the grantee agency for management of all CDBG-DR awards to the State going forward.

NCORR will receive proposals from companies (Offerors) interested in responding to this Request For Proposals (RFP) having specific experience and qualifications in the areas identified in this solicitation. For consideration, proposals for this project must contain evidence of Offeror's experience and abilities in the specified area and other disciplines directly related to the proposed service. The State anticipates awarding contracts to one or more qualified Offerors through this RFP.

NCORR invites general contractors with active unlimited licenses in North Carolina to submit proposals to provide construction management services for the rehabilitation, reconstruction, mitigation, elevation and new construction of single-family residential structures in compliance with local, Federal, and State statutory requirements for HUD CDBG-DR grants to the State of North Carolina for disaster recovery during the contract term. Offerors will also provide construction management services for work supporting buyouts/acquisitions (e.g., demolition work, abatement, and decommissioning wells and septic systems); repairs, reconstruction or new construction of modular homes/manufactured homes; small rental unit repairs; and/or multi-family rental homes (1 to 4 units). The actual construction work, which the Construction Manager would oversee, will be procured separately.

The selected Offeror will ideally have had previous experience in managing construction through a CDBG-DR program.

The selected Offeror shall be capable of providing NCORR construction management services for 2,000 to 3,000 homes damaged by federally declared disasters in North Carolina and eligible for CDBG-DR funding. The above construction management services estimate is based on preliminary information and is subject to change during the term of the contract. The geographic area of the construction projects for CDBG-DR allocations for Hurricanes Matthew and Florence cover multiple counties in eastern North Carolina. Specifically, the counties receiving CDBG-DR funding for Hurricane Matthew are identified in the State's Action Plan found at <https://www.rebuild.nc.gov/cdbg-dr-reporting-and-compliance>. Because the CDBG-DR allocation for Hurricane Florence is still forthcoming, the counties receiving assistance have not yet been identified; but for a general picture of the locations that received concentrated damage from Hurricane Florence, Offerors should consult FEMA's Individual Assistance data for the disaster at <https://www.fema.gov/disaster/4393>.

Funds granted by HUD will be utilized to purchase the management services specified in this RFP. Any contract entered into through this procurement that is to be paid from grant funds shall be limited to payment from the grant funding and the Offeror understands that NCORR has not set aside State funds for the payment of obligations under a grant contract. If grant funding should become unavailable at any time for the

continuation of services paid for by the grant, and further funding cannot be obtained for the contract, then the sole recourse of the awarded Construction Manager(s) shall be to terminate any further services under the contract and the contract shall be null and void.

CDBG-DR regulations and the State's Action Plan, as approved by HUD, shall apply to all contracts or purchase agreements made with the State of North Carolina. The State's CDBG-DR Action Plan and Homeowner Recovery Program (HRP) Manual can be found at: <https://www.rebuild.nc.gov/cdbg-dr-reporting-and-compliance> (hereinafter the "Program Manual").

The background information, general requirements and Sections I, II, III, V, VI, and Appendices A through D of the above-referenced Program Manual are incorporated into this RFP and the scopes of work set forth in this RFP should be read in conjunction with and/or interpreted to be consistent with the Program Manual unless the RFP specifically indicates otherwise. If there is a conflict between what is stated in Program Manual with the RFP, the RFP shall take precedence. The Program Manual is subject to amendment as the program is implemented.

2.0 GENERAL INFORMATION

2.1 DEFINITIONS, ACRONYMS AND ABBREVIATIONS

- A. **ADDENDUM / ADDENDA:** When the terms, conditions, specifications, responses to inquiries from Offerors, and/or scope(s) of work are changed, removed and/or added prior to the public opening of the proposals, an addendum addressing the nature of such change(s) will be issued in writing by DPS Purchasing & Logistics. When required, Offerors must sign and include an addendum and include it in the proposal and the failure to sign and return this type of addendum will, in most cases, result in the rejection of the proposal.
- B. **AUDIT:** The contract(s) awarded pursuant to this RFP are subject to audits by state and federal agencies and/or their authorized independent auditors. The auditors may conduct contract performance, financial and/or forensic/fraud audits.
- C. **BAFO:** Best and Final Offer, submitted by an Offeror to alter its initial offer, made in response to a request by the issuing agency.
- D. **BID PRICING BOOK:** NCORR has prepared a Bid Pricing Book for Contractors prequalified by the State and a blank copy of the Bid Pricing Book is provided as Attachment F to this RFP. A copy of the priced Bid Pricing Book shall be provided to CM(s) after the prequalification period for Contractors has ended. CM(s) shall become familiar with the Bid Pricing Book to manage Contractors' payment applications, change order requests and/or responding to requests for information concerning any items in the Bid Pricing Book. CM(s) will be required to assist NCORR in modifications to the Bid Pricing Book throughout the term of the Contract.
- E. **BUYER:** The NCORR employee, or such other person, NCORR shall delegate

that places an order with a Contractor to implement an HRP program for a specific home, and that order will also require the Offeror designated by NCORR to provide construction management services required by this RFP during the construction of the specified home.

- F. **CDBG-DR:** The Community Development Block Grant – Disaster Recovery for recovery efforts in North Carolina authorized and funded by the U.S. Department of Housing and Urban Development.
- G. **CM:** Construction manager or Vendor. See “Offeror” and “Vendor.”
- H. **CONSULTANT:** NCORR will hire one or more consultants pursuant to requests for proposals to determine CDBG-DR eligibility of homeowners who have submitted applications under HRP and, as part of the eligibility process, the consultants will perform damage and environmental assessments for each home. After a home is determined to be eligible for HRP and the program determined (rehabilitation, reconstruction, elevation, replacement and/or new construction of single family or manufactured housing units), a Contractor will be assigned and the Construction Manager will coordinate the work performed under the contract with NCORR, homeowner, Contractor and Consultant to make sure the work performed complies with CDBG-DR requirements (including reporting and CDBG-DR case management by Consultant) and construction work and any abatement completed in a timely manner with the specified quality and workmanship.
- I. **CONTRACT LEAD:** Representative of NCORR who corresponds with CM to administer this contract for the State.
- J. **CONTRACTOR or CONTRACTORS:** The construction contractors the State has qualified to construct HRP homes consisting of rehabilitation, reconstruction, replacement, and elevation, whom the Construction Manager(s) selected by NCORR under this RFP will provide NCORR construction management services to.
- K. **DPS:** North Carolina Department of Public Safety.
- L. **E-PROCUREMENT SERVICES:** The program, system, and associated services through which the State conducts electronic procurement.
- M. **EVALUATION:** Evaluation shall be used as a determinant as to which proposed services are the most efficient and/or most economical for the State.
- N. **GRANT ELIGIBILITY DETERMINATION:** NCORR’s Consultant will assist NCORR in making final HRP award determinations for program applicants that will include damage and environmental assessments, which

will assist CM and Contractor in determining the homeowner's unmet need and, thus, the corresponding scope of work for the grant-eligible home.

- O. **HRP:** The Housing Recovery Program, which is the CDBG-DR-funded program administered by NCORR that provides awards to eligible homeowners impacted by Hurricanes Matthew and/or Florence. Pursuant to the Program Manual found at rebuild.nc.gov, HRP offers rehabilitation, reconstruction, elevation, mobile home repair and replacement, among other benefits.
- P. **NCORR:** The North Carolina Office of Recovery and Resiliency, established to become the grantee agency for the state of North Carolina for the administration and implementation of CDBG-DR.
- Q. **OFFEROR:** Construction Manager, Construction Management firm, or "CM," with an unlimited North Carolina unlimited-licensed general contractor's license with construction management experience that is the bidder, proposer, company, firm, corporation, partnership, individual, person or other entity submitting a response to a Request for Proposal. Use of Construction Manager or CM hereinafter shall primarily refer to work, terms and conditions applicable to an Offeror awarded a contract pursuant to this RFP.
- R. **PROPOSAL:** A responsive proposal submitted by a responsible Offeror.
- S. **RFP:** Request for Proposal.
- T. **SECTION 3:** Section 3 of the federal Housing and Urban Development Act.
- U. **STATE:** The State of North Carolina, including any of its sub-units and political subdivisions recognized under North Carolina law.
- V. **STATE AGENCY:** For purposes of this RFP, any sub-unit within the executive branch of the State, State Officials or Council of State Agencies that may have statutory or regulatory duties arising from or related to this RFP, HRP, CDBG-DR, recovery funding appropriated in State Disaster Recovery Acts, and/or Hazard Mitigation Grant Program (HMGP) and these sub-units include but are not limited to: Governor's Office, Department of Commerce, Department of Public Safety (including NCORR, NCEM, and Division of Purchase & Logistics), Department of Administration (including State Construction Office and Purchase and Contract), State Building Commission, Department of Insurance, Department of Labor, Department of Insurance, Office of State Auditor, Office of the State Controller, State Treasurer, Office of the Attorney General, and State licensing boards.

- W. **VENDOR:** CM, bidder, proposer, company, firm, corporation, partnership, individual or other entity submitting a response to a Request for Proposal.

2.2 NOTICE TO OFFERORS REGARDING RFP TERMS AND CONDITIONS

It shall be Offeror's responsibility to read the Instructions, the State's terms and conditions, all relevant exhibits and attachments, and any other components made a part of this RFP, and comply with all requirements and specifications herein. Offerors also are responsible for obtaining and complying with all Addenda and other changes that may be issued in connection with this RFP.

If Offerors have questions, issues, or exceptions regarding any term, condition, or other component within this RFP, those must be submitted as questions pursuant to the instructions set forth in Section 2.5, below. If the State determines that any changes will be made as a result of the points raised, then such decisions will be communicated in the form of an RFP Addendum. The State may also elect to leave open the possibility for later negotiation of specific components of the Contract that have been addressed during the question and answer period. Other than through this process, the State rejects and will not be required to evaluate or consider any additional or modified terms and conditions submitted with Offeror's proposal. This applies to any language appearing in or attached to the document as part of Offeror's proposal that purports to vary any terms and conditions or Offeror instructions herein or to render the proposal non-binding or subject to further negotiation. **By execution and delivery of this RFP Response, the Offeror agrees that any additional or modified terms and conditions, whether submitted purposely or inadvertently, shall have no force or effect, and will be disregarded. Noncompliance with, or any attempt to alter or delete, this paragraph shall constitute sufficient grounds to reject Offeror's proposal as nonresponsive.**

If an Offeror desires modification of the terms and conditions of this solicitation, it is urged and cautioned to inquire during the question period, in accordance with the instructions in Section 2.4 of this RFP, about whether a specific, proposed language modification is acceptable to, or will be considered by, the State. Identification of objections or exceptions to the State's terms and conditions in the proposal itself shall not be allowed and shall be disregarded or the proposal rejected.

Contact with anyone working for or with the State regarding this RFP other than the person named on page 1 of this RFP, in the manner specified by this RFP, shall constitute grounds for rejection of said Offeror's proposal, at the State's election.

2.3 RFP SCHEDULE

The table below shows the intended schedule for this RFP. The State will make every effort to adhere to this schedule.

Event	Responsibility	Date and Time
Issue RFP	State	February 14, 2019
RFP Questions Submitted	Offeror	February 20, 2019 by 2:00 PM ET
Provide Response to Questions	State	February 22, 2019
Submit Proposals	Offeror	February 28, 2019 by 2:00 PM ET
Offeror Presentations & Interviews	State & Offerors	To Be Determined

Contract(s) Award	State	To Be Determined
Contract Effective Date	State	To Be Determined

2.4 PROPOSAL QUESTIONS

Upon review of the RFP documents, Offerors may have questions to clarify or interpret the RFP in order to submit the best proposal possible. To accommodate the Proposal Questions process, Offerors shall submit any such questions by the above due date.

Written questions shall be e-mailed to angela.wainright1@ncdps.gov by the date and time specified above. Offerors should enter “NCORR CM RFP Questions” as the subject for the email. Questions should include a reference to the applicable RFP section and be submitted in a format shown below:

Reference	Offeror’s Question
RFP Section, Page Number	Firm question...?

Questions received prior to the submission deadline date, the State’s response, and any additional terms deemed necessary by the State will be posted in the form of an addendum and shall become an addendum to this RFP. No information, instruction or advice provided orally or informally by any State personnel, whether made in response to a question or otherwise in connection with this RFP, shall be considered authoritative or binding. Offerors shall rely *only* on written material contained in an addendum to this RFP. NCORR will not be bound by any information conveyed verbally.

2.5 PROPOSAL CONTENT

Proposals shall be formatted and organized in the following order for consistency and easy screening:

- All proposals must be typed, single spaced, and printed single-sided on 8 ½” by 11” paper.
- One (1) original, **clearly marked “ORIGINAL”**, and five (5) copies, **clearly marked “COPY”**, must be submitted in separate three-ring, loose-leaf binders with identification of Offeror, the RFP number, and the RFP title on the front cover. One (1) flash drive containing the complete response in Word/Excel format must be provided and placed in the ORIGINAL response; a self-adhesive packet may be used to secure the flash drive.
- The complete proposal response must be sealed in an envelope or box for delivery to the DPS Purchaser identified on page 1 above.
- All documents must be labeled with Offeror’s name and the RFP number.
- Each section of Offeror’s proposal should start on a new page. A tabbed divider page marked with the section number should separate each section.
- Prepare a Table of Contents for the proposal being submitted and place it after the RFP cover sheet and before Section I. The Table of Contents must list Sections I-VII and the contents of each section.

Proposals must be submitted in the following order:

RFP Cover Sheet Table of Contents

Section I: Transmittal Letter – The transmittal letter should include:

- Company name and address; name, title, email, telephone and fax number of person(s)

to be contacted for clarifications or additional information regarding proposal;

- Name, title, email, telephone and fax number of person authorized to contractually obligate Offeror's company with proposal and any future negotiations; and
- A brief statement summarizing Offeror's understanding of the project and relevant experience.

Section II: Scope of Service/Narrative of Proposed Services (See Section 5.0)

- Describe Offeror's philosophy, approach(es) and preferred methods for meeting requirements and/or deliverables in the Scope of Work and Specifications.
- Indicate if Offeror can meet the specifications, or if the specifications can be met only under certain conditions or circumstances. If Offeror is not able to meet the specification, briefly explain why, noting any concerns or issues NCORR should be aware of.
- Provide a proposed timeline indicating deliverables, Offeror's responsibilities and resources needed from NCORR.

Mere reiterations of specifications are strongly discouraged, as they do not provide insight into Offeror's ability to meet the specifications.

Section III: Pricing Information – See Section 4.4 for instructions.

Section IV: Organizational Information/Experience/Qualifications (See Section 4.8)

- Offeror's history, background and principal officers' resumes
- Company organization chart
- Description of project team organization; names and resumes of team members
- Audited financial statements (marked "CONFIDENTIAL" on each page)
- Licenses/accreditations/credentials
- References – refer to Section 4.9, below
- Confirmation that Offeror has at least eight (8) years of experience in residential construction management
- A description of staff capacity to work with persons with physical and mental disabilities
- A description of your organization's ability to satisfy all federal, state and local reporting requirements and to maintain that documentation (paper and electronic) relating to the construction management of HUD-funded disaster recovery housing programs and your organization's years of experience doing so.
- A description of your organization's experience working with other governmental entities to manage residential construction efforts for disaster recovery housing programs including the number of years your organization has performed such services.

Section V: Legal Documents – Include any standard agreement(s) and/or contracts(s) associated with Offeror's response, including Residence Certification, and Proof of Insurance.

Section VI: Miscellaneous – Company brochures, marketing materials, or any other information Offeror deems appropriate to the RFP response may be included in this section.

NCORR makes no guarantee that any services will be purchased as a result of this RFP, and reserves the right

to reject any and all proposals if the initial responses to the RFP have been evaluated and determined to be unsatisfactory. All proposals and accompanying documentation will become the property of NCORR. All proposals are open to negotiation.

Offeror is expected to examine all documents, forms, specifications, and all instructions. Failure to do so will be at Offeror's risk.

3.0 METHOD OF AWARD AND PROPOSAL EVALUATION PROCESS

3.1 METHOD OF AWARD

The State will review all Offeror responses to this RFP to confirm that they meet the specifications and requirements of the RFP.

The State will conduct a One-Step evaluation of Proposals:

Proposals will be received from each responsive Offeror according to the method of submission specified in Section 2.5 of this RFP.

All proposals must be received by the issuing agency not later than the date and time specified on the cover sheet of this RFP.

At that date and time, the proposal from each responding firm will be opened publicly and the name of the Offeror will be announced.

At their option, the evaluators may request oral presentations or discussions with any or all Vendors for clarification or to amplify the materials presented in any part of the proposal. Vendors are cautioned, however, that the evaluators are not required to request presentations or other clarification—and often do not. Therefore, all proposals should be complete and reflect the most favorable terms available from the Vendor.

Proposals will generally be evaluated according to completeness, content, and experience with similar projects, ability of the Vendor and its staff, and cost. Specific evaluation criteria are listed in Section 3.3 EVALUATION CRITERIA, below.

Vendors are cautioned that this is a request for offers, not an offer or request to contract, and the State reserves the unqualified right to reject any and all offers at any time if such rejection is deemed to be in the best interest of the State.

3.2 PROPOSAL EVALUATION PROCESS

All proposals will be examined by an evaluation committee consisting of various State personnel. Evaluation committee shall use the outlined process in section 3.4 below. **Pricing is NOT the only criteria for making a recommendation.**

The State reserves the right to reject all original offers and request one or more of the vendors submitting

proposals to submit best and final offers (BAFOs), prepared in collaboration with the State after the initial responses to the RFP have been evaluated. Upon completion of the negotiations, NCORR will make an award(s).

All proposals that have been submitted shall be available and open for public inspection after the contract is awarded except for trade secrets or confidential information contained in the proposals and identified as such.

Proposals that do not conform with the instructions or which do not address all the services as specified may be deemed nonresponsive and eliminated from consideration by the Evaluation Committee. However, NCORR reserves the right to waive minor informalities if it is determined to be in the best interest of the State and complies with the requirements of State procurement law and applicable federal regulations.

While NCORR appreciates a brief, straightforward, concise reply, the proposer must understand that the evaluation is based on the information provided. Accuracy and completeness are essential. Omissions and ambiguous or equivocal statements may be construed against Offeror. Offerors are cautioned that the contents of the proposal will be incorporated into any contract which results from this RFP.

DPS Purchasing & Logistics may initiate discussions with selected Offerors as set forth in the instructions in this RFP. However, discussions may not be initiated by Offerors. Offerors shall not contact any NCORR personnel during the RFP process without the express permission from DPS Purchasing and Logistics. DPS Purchasing & Logistics may disqualify any Offeror who has made site visits, contacted NCORR personnel or distributed any literature without authorization from DPS Purchasing & Logistics.

All correspondence relating to this RFP, from advertisement to award shall be sent to the address listed on the cover page of this RFP. All presentations and/or meetings between NCORR and Offerors relating to this RFP shall be coordinated by DPS Purchasing & Logistics.

Selected Offerors may be requested to make a presentation or attend an interview with the Evaluation Committee. In addition to presentations and/or interviews, the Evaluation Committee may request site visit(s) of Offeror's place of business and/or current project site to evaluate Offeror's proposal in a production environment.

3.3 EVALUATION CRITERIA

Award shall be made to the responsible Offeror(s) whose proposal(s)—incorporating the entire written proposal, any interview or presentation—is/are determined to be the best evaluated offer(s) according to the criteria listed below and the maximum point score identified with each criterion:

A.	Technical Approach to the Scope of Work (Sections 5.1, 5.1.1, and any presentation)	35
B.	Demonstrated Ability to Comply with all State and Federal Requirements (Section 4.3)	10
C.	Relevant Qualifications and Experience (Sections 4.7, 4.8, and 4.9)	35
D.	Vendor's Cost Proposal (Section 4.4, Attachment I)	20

MAXIMUM TOTAL 100

Submission of a proposal implies Offeror's acceptance of the evaluation criteria and Offeror's recognition that subjective judgments must be made by the Evaluation Committee.

3.4 AWARD

NCORR anticipates awarding one or more contracts under this RFP.

This RFP does not obligate NCORR to the eventual purchase of any product/service described, implied or which may be proposed. Progress toward this end is solely at the discretion of NCORR and may be terminated at any time prior to execution of an agreement.

3.4.1 LEGAL REVIEW OF PROPOSED CONTRACT AWARD(S):

Prior to the award of the contract(s) pursuant to this RFP, a legal review must be conducted by the Contract Management Section of the N.C. Department of Administration's Division of Purchase and Contract pursuant N.C. Gen. Stat. § 143-50.1, and/or the Office of the North Carolina Attorney General pursuant to N.C. Gen. Stat. § 114-8.3.

3.4.2 LEGAL DOCUMENTS:

Offerors shall submit any agreement for products/services which may be required by Offeror's organization to enter into a contract with NCORR. The awarded Offeror(s) will be required to execute an agreement with NCORR which finalizes the terms and conditions set forth in Offeror's proposal, best and final offer (BAFO), if applicable, and any negotiations between Offeror(s) and NCORR.

3.4.3 PRIORITY OF DOCUMENTS:

In the event of an inconsistency or conflict between or among the provisions of these contract documents, the inconsistency shall be resolved by giving precedence in the following order (highest to lowest):

- (1) Any Amendments to this contract entered into pursuant to N.C. General Contract Terms and Conditions Section 26 in Attachment E below.
- (2) Any BAFO agreement.
- (3) Any addenda to the RFP, including questions and answers regarding the RFP.
- (4) The RFP.
- (5) North Carolina Contract Terms and Conditions.
- (6) Offeror's proposal in response to the RFP.

3.5 INTERPRETATION OF TERMS AND PHRASES

This RFP serves two functions: (1) to advise potential Offerors of the parameters of the solution being sought by NCORR; and (2) to provide (together with other specified documents) the terms of the Contract resulting from this procurement. As such, all terms in the RFP shall be enforceable as contract terms in accordance with the General Contract Terms and Conditions. The use of phrases such as "shall," "must," and "requirements" are intended to create enforceable contract conditions. In determining whether proposals should be evaluated or rejected, NCORR will take into consideration the degree to which Offerors have proposed or failed to propose solutions that will satisfy NCORR's needs as described in the RFP. Except as specifically stated in the RFP, no one requirement shall automatically disqualify an Offeror from consideration. However, failure to comply with any single requirement may result in NCORR exercising its discretion to reject a proposal in its entirety.

4.0 CONTRACT REQUIREMENTS

4.1 CONTRACT TERM

The Contract shall have an initial term of two (2) years, beginning on the date of contract award (the “Effective Date”). Offeror(s), if awarded under the Contract, shall begin putting capacity in place immediately after the Effective Date.

NCORR reserves the right to renew this Contract with up to four (4) one-year renewal options for each Offeror. The total potential period of this Contract is six (6) years. Once the renewal option is exhausted, the contract must be rebid. NCORR reserves the right to rebid at any time as is in the best interest and is not automatically bound to renew.

4.2 GENERAL REQUIREMENTS

This Section lists the requirements related to this RFP. By submitting a proposal, Offeror agrees to meet all stated requirements in this Section as well as any other specifications, requirements and terms and conditions stated in this RFP. If an Offeror is unclear about a requirement or specification or believes a change to a requirement would allow for the State to receive a better proposal, Offeror is urged and cautioned to submit these items in the form of a question during the question and answer period per Section 2.4. The term “Offeror” used in this Section may refer to a successful Offeror or a contractor or subcontractor that Offeror(s) may manage pursuant to the contract resulting from this RFP. The context will determine whether the “Offeror” is also the “Offeror” referenced in the federal and state laws and regulations referenced in this Section.

4.3 FEDERAL AND STATE REQUIREMENTS

Each Offeror shall demonstrate in the bid response the ability to satisfy the following requirements:

4.3.1 Section 3 of the Housing and Urban Development Act. The work to be performed under a contract awarded pursuant to this RFP that will utilize funds provided by HUD and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u. Section 3 requires that to the greatest extent feasible, opportunities for training and employment be given to lower income residents in the project area and contracts for work in connection with this project be awarded to business concerns which are located in or owned in substantial part by persons residing in the area of the program. The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing. The parties to this contract agree to comply with HUD’s regulations in 24 CFR part 135, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations. OFFEROR WILL ASSIST NCORR IN FACILITATING AND REPORTING OFFERORS’ AND SUBCONTRACTORS’ COMPLIANCE WITH SECTION 3 REGULATIONS.

4.3.2 Offeror agrees to send to each labor organization or representative of workers with which the Offeror has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of Offeror's commitments under this Section 3 clause, and

will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

4.3.3 Offeror agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. Offeror will not subcontract with any subcontractor where Offeror has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.

4.3.4 Offeror will certify that any vacant employment positions, including training positions, that are filled (1) after Offeror is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent Offeror's obligations under 24 CFR part 135.

4.3.5 Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

4.3.6 With respect to work performed in connection with Section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of Section 3 and section 7(b) agree to comply with Section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

4.3.7 Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). All nonresidential prime construction contracts in excess of \$2,000, and all residential prime construction contracts involving 8 or more units, which are awarded through the HRP program must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, prime contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, prime contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. OFFEROR WILL ASSIST NCORR IN FACILITATING AND REPORTING CONTRACTORS' COMPLIANCE WITH AFOREMENTIONED FEDERAL PREVAILING WAGE LAWS AND REGULATIONS, WHERE APPLICABLE.

4.3.8 Anti-Kickback Rules. Offeror will comply with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). Under the Act, the Offeror is prohibited from inducing, by any means, any person

employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. NCORR must report all suspected or reported violations to the Federal awarding agency.

4.3.9 Contract Work Hours and Safety Standards Act (Overtime). Where applicable, all contracts funded by CDBG-DR and awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, every mechanic and laborer on a construction contract exceeding \$100,000 must be compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Under 40 U.S.C. 3704, no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence. OFFEROR WILL ASSIST NCORR IN FACILITATING AND REPORTING CONTRACTORS' COMPLIANCE WITH THE CONTRACT WORK HOURS AND SAFETY STANDARDS ACT, WHERE APPLICABLE.

4.3.10 Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended. Offeror will comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

4.3.11 Debarment and Suspension (Executive Orders 12549 and 12689). A contract award (see 2 CFR 180.220) must not be made to parties listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. Any Offeror that is debarred, suspended, or otherwise excluded from federal contracting is ineligible for this procurement.

4.3.12 Byrd Anti-Lobbying Amendment (31 U.S.C. 1352). Offerors and each of their subcontractors, if any, must file a certification to the tier above that they will not and have not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

4.3.13 The State and federal False Claims Acts, N.C. Gen. Stat. §§ 1-612 *et seq.*, and 31 U.S.C. 3729 *et seq.*, respectively, apply to the contract resulting from this RFP, as well as to the construction contracts and subcontractors Offeror(s) will be overseeing on behalf of NCORR as part of the construction management services requested by this RFP.

4.3.14 Minority- and Women-Owned Business Inclusion. When feasible, Offerors shall employ local contractors, employees, and "minority businesses" as defined in N.C. Gen. Stat. § 143-128.2.

OFFEROR WILL ASSIST NCORR IN FACILITATING AND REPORTING CONTRACTORS' COMPLIANCE WITH HIRING AND CONTRACTING GOALS FOR MINORITY- AND WOMEN-OWNED BUSINESSES.

4.3.15 Any hardware, software, and communications enhancements/applications to the systems and/or data acquired and developed as part of this RFP shall be the property of the State and must be provided to the State when directed by NCORR. All systems must adhere to the standards documented in the North Carolina Statewide Technical Architecture.

4.3.16 Offeror using third-party proprietary software to produce deliverables under this procurement shall determine whether such software may be necessary for the State to use the deliverables, and if so, Offeror shall determine the costs thereof and specifically identify the software and costs in their proposal. Offeror and subcontractors shall also identify any third-party software that may be sublicensed by Offeror to the State together with any costs necessary to provide NCORR and the United States Government with a royalty-free, paid-up, perpetual, non-exclusive, non-transferable license necessary to access and manipulate deliverables.

4.3.17 NCORR works in close coordination with other federal and state agencies. The selected Offeror(s) shall perform under the direction of NCORR and will also be required to coordinate with Federal and State agencies, local community officials, and the public as directed by NCORR.

4.4 PRICING

Offeror must use Attachment I of this RFP for a cost proposal for the provision of all services set forth in Section 5.1 (Scope of Work). The proposal shall include the items set forth below. Upon award, NCORR and Offeror will finalize the cost plan.

- a) Key CM Personnel: Titles of key management-level personnel and specific individuals for each title identified by the CM in its Proposal.
- b) Other CM Personnel: Titles and specific individuals for each title.
- c) Hourly Rate for each specified individual. The Offeror should include any potential travel, living, or overhead costs into proposed hourly rates, which shall be all inclusive.
- d) Total estimated hours per title per month.
- e) Total estimated cost per title per month.
- f) Total estimated cost for all titles per month Estimated total cost for all titles shall be the monthly not-to-exceed contract price, subject to any negotiations between the State and the awarded Offeror.

As set forth in Attachment I, Offeror must provide a cost proposal for two phases of scope delivery. Phase 1 includes delivery of Scope of Work until the completion of Initial Milestones outlined in Section 5.1.1. Phase 2 includes delivery of Scope of Work after the completion of Initial Milestones outlined in Section 5.1.1.

Unit Price Conversion. Within six months following the Effective Date of a contract resulting from this RFP, NCORR, after consultation with CM, may establish a fair and reasonable unit price structure or alternative price structure, which may be based on the time and effort reports submitted by the CM and approved by NCORR during the period of time before price conversion.

Unit prices may be established for the following categories of the Scope of Work:

- a) CM services for Single Family Home Rehabilitation
- b) CM services for Single Family Home Rehabilitation with Elevation
- c) CM services for Single Family Home Reconstruction
- d) CM services for Single Family Home Buyout
- e) CM services for Single Family Home Environmental Abatement (e.g. lead, asbestos, mold, hazardous materials, etc.)
- f) CM services for Small Rental Repair (1-4 unit housing)

Program management services will continue to be billed separately from the unit categories above, at proposed hourly rates rather than be converted to unit price.

Prior to the establishment of any unit price structure, CM shall be paid for all work properly performed in accordance with the Contract, for the period between the effective date of the Contract and the effective date of the new price structure, based on time and effort records. Thereafter, the value of such work shall be computed under the new price structure.

4.5 INVOICES

Invoices shall be submitted monthly, no later than the 15th of the month following the invoiced work. Initially, all work shall be billed based on the agreed-upon hourly rates, positions, and monthly not-to-exceed amounts, with each personnel member's amount of billable effort disclosed in hours. CM will be required to account for all personnel time in a format required by NCORR by project type (e.g. Rehabilitation, Rehabilitation with Elevation, Reconstruction, Buyout, Abatement, Small Rental Repair, Program Management) and include this accounting with the time records submitted to NCORR for payment. A sample vendor time report is included as Attachment K and is subject to revision.

Upon the establishment of any unit-priced billing system, NCORR will provide an updated invoicing format, which would account for the numbers of units provided by CM for each invoicing period, along with time and effort provided for program management services.

Each invoice, whether in a time-based or unit-based format, shall include any supporting documentation required by the CDBG-DR rules, guidelines and standards.

4.6 TAXES

Any applicable taxes shall be invoiced as a separate item. G.S. §143-59.1 bars the Secretary of Administration from entering into Contracts with Offeror if Offeror or its affiliates meet one of the conditions of G. S. §10 164.8(b) and refuses to collect use tax on sales of tangible personal property to purchasers in North Carolina and the conditions include: (1) Maintenance of a retail establishment or office; (2) Presence of representatives in the State that solicit sales or transact business on behalf of Offeror; and (3) Systematic exploitation of the market by media-assisted, media-facilitated, or media-solicited means. By execution of the proposal document Offeror certifies that it and all of its affiliates (if it has affiliates) will collect(s) the appropriate taxes.

- a) All agencies participating in this Contract are exempt from Federal Taxes, such as excise and transportation. Exemption forms submitted by Offeror will be executed and returned by the using agency.
- b) Prices offered are not to include any personal property taxes, nor any sales or use tax (or fees)

unless required by the North Carolina Department of Revenue.

4.7 FINANCIAL STABILITY

Offeror shall submit the following financial documentation with its Proposal: most recent annual balance sheet, income statement/statement of retained earnings and cash flow statement, or most recent statement of financial condition by an independent auditor. Financial information, statements and/or documents submitted with a proposal shall be evaluated to determine: whether Offeror has sufficient ability to perform the contract; whether Offeror is able to meet its short term obligations, debts, liabilities, payroll, and expenses; whether Offeror has provided complete, reliable and accurate financial information regarding its business operation; whether Offeror is financially solvent; and whether Offeror has sufficient cash flow and/or available financing from a financial institution to perform the proposed contract for 60 days without receiving payment from the State. Financial information of non-public entities may be marked as confidential in accordance Paragraph 19 of Attachment E.

4.8 OFFEROR EXPERIENCE

In its Proposal, Offeror shall demonstrate experience with public and/or private sector clients with similar or greater size and complexity to the State of North Carolina. Offeror shall provide information as to the qualifications and experience of all executive, managerial, legal, and professional personnel to be assigned to this project, including resumes and biographical summaries citing experience with similar projects and the responsibilities to be assigned to each person.

4.9 REFERENCES

Offerors must provide a minimum of three (3) references or letters of reference from other agencies, government organizations, or companies for whom Offeror has provided similar services in the past eight (8) years as demonstration of Offeror's prior experience. Letters must include the following information:

- Organization/client name/address;
- Name of contact person;
- Telephone number for contact;
- Offeror's services provided to this client;
- Professional relationship with the organization/client;
- Description of Offeror's ability to staff project as represented contract and retention of that staff during project;
- Description of experience with working with Offeror's staff on project and the quality of staff provided by Offeror; and
- Whether the organization/client would recommend Offeror.

References provided must be current and verifiable. DPS Purchasing & Logistics may conduct reference checks to verify and validate each Offeror's past performance. An Offeror's failure to provide verifiable references or letters of reference may be cause for rejection of the response submitted.

4.10 BACKGROUND CHECKS

NCORR may require Offeror, its executive officers, its senior management personnel, and/or subcontractors to be assigned to this contract to provide or undergo background checks at Offeror's expense prior to beginning work with the State or at any time during the performance of the project. When requested, as part of a requested background check, Offeror must provide NCORR with information for:

- a) Any **criminal felony conviction**, or conviction of any crime involving moral turpitude, including, but not limited to fraud, misappropriation or deception, of Offeror, its officers or directors, or any of its employees or other personnel to provide services on this project, of which Offeror has knowledge or a statement that it is aware of none;
- b) Any **criminal investigation** for any offense involving moral turpitude, including, but not limited to fraud, misappropriation, falsification or deception pending against Offeror of which it has knowledge or a statement it is aware of none;
- c) Any **regulatory sanctions** levied against Offeror or any of its officers, directors or its professional employees expected to provide services on this project by any state or federal regulatory agencies within the past three years or a statement that there are none. As used herein, the term "regulatory sanctions" includes the revocation or suspension of any license or certification, the levying of any monetary penalties or fines, and the issuance of any written warnings;
- d) Any **regulatory investigations** pending against Offeror or any of its officers, directors or its professional employees expected to provide services on this project by any state or federal regulatory agencies of which Offeror has knowledge or a statement that there are none.
- e) Any **civil litigation**, arbitration, proceeding, or judgments pending against Offeror during the three (3) years preceding submission of its proposal herein or a statement that there are none.

Offeror's responses to these requests shall be considered to be continuing representations, and Offeror's failure to notify NCORR within thirty (30) days of any criminal litigation, investigation or proceeding involving Offeror or its then current officers, directors or persons providing services under this contract during its term shall constitute a material breach of contract. The provisions of this paragraph shall also apply to any subcontractor utilized by Offeror to perform services under this contract.

4.11 PERSONNEL

Offeror shall not substitute key personnel assigned to the performance of this Contract without prior written approval by the Contract Lead. Offeror shall notify the Contract Lead of any desired substitution, including the name(s) and references of Offeror's recommended substitute personnel. NCORR will approve or disapprove the requested substitution in a timely manner. NCORR may request the removal of or bar any person for cause providing services under this Contract. Upon such removal, NCORR may request acceptable substitute personnel.

4.12 OFFEROR'S REPRESENTATIONS

- a) Offeror warrants that qualified personnel shall provide services under this Contract in a professional manner. "Professional manner" means that the personnel performing the services will possess the skill and competence consistent with the prevailing business standards in the industry. Offeror agrees that it will not enter any agreement with a third party that may abridge any rights of the State under this Contract. Offeror will serve as the Contractor under this Contract and shall be responsible for the performance and payment of all subcontractor(s) that may be approved by the State. Names of any third party vendors, suppliers or subcontractors of Offeror may appear for purposes of convenience in Contract documents; and shall not limit Offeror's obligations hereunder. Offeror will retain executive representation for functional and technical expertise as needed in order to incorporate any work by third party subcontractor(s).
- b) If any services, deliverables, functions, or responsibilities not specifically described in this Contract are required for Offeror's proper performance, provision and delivery of the service and deliverables under this Contract, or are an inherent part of or necessary sub-task included within such service, they will be deemed to be implied by and included within the scope of the Contract to the same extent and in the same manner as if specifically described in the Contract. Unless otherwise expressly provided herein, Offeror will furnish all of its own necessary management, supervision, labor, facilities, furniture, computer and telecommunications equipment, software, supplies and materials necessary for Offeror to provide and deliver the Services and Deliverables.
- c) Offeror warrants that it has the financial capacity to perform and to continue perform its obligations under the Contract; that Offeror has no constructive or actual knowledge of an actual or potential legal proceeding being brought against Offeror that could materially adversely affect performance of this Contract; and that entering into this Contract is not prohibited by any contract, or order by any court of competent jurisdiction.

5.0 SCOPES OF WORK & PROJECT SPECIFICATIONS

5.1 SCOPE OF WORK:

NCORR invites construction management firms with proper licensures in North Carolina pursuant to G.S. Chapter 87 experienced in affordable and disaster recovery housing to submit proposals to provide construction management services for rehabilitation, reconstruction, mitigation, elevation and new construction of single-family residential structures in compliance with local, Federal, and State statutory requirements for HUD CDBG-DR grants to the State during the contract term. Prequalified contractors may also perform work supporting buyouts/acquisitions (e.g., demolition work, abatement, and decommissioning wells and septic systems); repairs, reconstruction or new construction of modular homes/manufactured homes; small rental unit repairs; and/or multi-family rental homes (1 to 4 units). The selected Offeror will ideally have had previous experience in managing construction through a CDBG-DR

program. Offeror shall be capable of providing construction management services for approximately 2,000 to 3,000 homes. As additional funding is made available, the number of projects may increase.

Housing program policies outlined below are subject to change and HUD approval. Please refer to the HRP found here for current program policies: <https://www.rebuild.nc.gov/cdbg-dr-reporting-and-compliance>.

Current proposed program policies include:

- **Housing Rehabilitation:** the performance of repairs valued up to \$70,000 for homes that suffered damage, repairs that may not exceed 80% of that home's pre-disaster value. These thresholds are subject to amendment. Rehabilitation includes, but is not limited to: repairs to make the home compliant with Housing Quality Standards (HQS) as outlined in form HUD-52580; addressing accessibility; lead, asbestos and environmental abatement; and/or elevation as needed for homes with damage that exceeds 50% of pre-disaster value. An additional \$50,000 is available for elevation of a rehabilitated home located within the 100-year floodplain.
- **Housing Reconstruction:** demolishing an existing structure, debris disposal, site work, and rebuilding the home where storm-related damages equal or exceed at least 50% of the home's pre-disaster value. The value of this work will not exceed \$127 per square foot per project. (Homes that have damage between 50% and 79% of the pre-disaster value are considered "substantially damaged," and have the option to Reconstruct *or* Rehabilitate based on the best value for both the homeowner and the State.) Homes that have damage over 80% will be reconstructed. Offerors are directed to the Program Manual identified in Section 1.0 above for more details as to Housing Rehabilitation and Reconstruction policies.

NCORR and its Consultants will be responsible for determining grant eligibility of individual applications, which will include damage and environmental assessments that will be used in classifying homes under HRP and determining the types of construction contracts that CM will manage pursuant to this RFP. The CM will not be responsible for eligibility and award determination of individual applications.

Required services shall include turnkey construction management beginning prior to construction start through final inspection and completion of all supporting documentation. Some homes may be converted from rehabilitation to reconstruction at the discretion of NCORR and its Consultants. For reconstruction, Offeror shall assist homeowners in choosing plans from a set of house plans that are pre-selected and separately procured by the State, and shall coordinate construction efforts between NCORR, homeowners, builders, subcontractors and appropriate third parties. Design, architectural, and engineering plans for HRP projects have been or will be procured separately from this RFP; however, should Offeror wish to submit design, architectural, and engineering services as part of its proposal, then NCORR will evaluate those proposed services. The purposes for any such services would be for altering, modifying, or underwriting the architectural, engineering, or construction plans that a general construction contractor has included in its scope of work for a project overseen by the Construction Manager, or for providing quality control for the execution of plans which have already been procured by NCORR.

Per the State's CDBG-DR Action Plan and its amendments, in some of the counties receiving homeowner assistance under the Hurricane Matthew funding allocation, construction management services may be provided through a locally procured vendor, rather than through this RFP.

Services expected from Offeror(s) for the management of all aspects of the construction process include but are not limited to the following, which is subject to Amendment pursuant to procedure outlined in this

RFP:

- a. Contractor mobilization plan, including timelines and stages, for getting the HRP construction program fully operational. CM will assist NCORR in putting together bid packages for bidding by pre-qualified contractors. See Initial Milestones in Section 5.1.1 for further discussion.
- b. NCORR has a pre-qualified pool of prime contractors. CM will be responsible for working with the pre-qualified pool to batch, bid or recommend contractors to homeowner
 - i. NCORR will seek CM services to maintain and update the pre-qualified pool of contractors, which shall be no less frequently than once a year.
- c. CM shall assist NCORR in the preparation of bid packages to be bid upon by the pre-qualified contractors, from a prequalified list, to recommend HRP construction projects to. CM will assist NCORR in designing and implementing the Standard Operating Procedure for awarding these projects, which will be done through a batched bidding process as groups of qualified housing applicants are approved for construction assistance. CM will monitor the performance of Contractors on projects assigned under HRP, and will create a method to evaluate the performance of contractors and maintain the pre-qualified pool of contractors.
- d. CM will be given licenses to use NCORR's System of Record, a Salesforce-based application, to upload all CM and Contractor documents for each home that will be managed by CM. CM will immediately, after the Effective Date of the Contract, begin coordination with NCORR for training on the System of Record modules relating to construction and construction management and will be expected to be proficient in the use of the System of Record by 30 to 60 days after the Effective Date of the Contract (e.g. issuing notices to proceed, processing change orders, and submitting invoices). NCORR will export relevant home and homeowner information into the modules to be used by CM, to include damage assessments and scopes of construction and abatement work. NCORR will set up a portal in the System of Record for Contractors to upload documents, reports and data for CM's use and reporting requirements. Contractors will also be given Salesforce licenses, and, as needed, CM shall assist Contractors in uploading documents and information into the System of Record. Offeror will be required to input all information and documents directly into the System of Record or shall ensure that all information and documents shall be uploaded daily. CM is also expected to assist NCORR in developing process maps for construction management that NCORR can incorporate into the System of Record.
- e. CM shall assist any homeowner in selecting a house plan and/or option for reconstruction or replacement under HRP using pre-designed home plans as coordinated by NCORR. CM shall assist any homeowner in understanding any environmental remediation required for his or her home. CM shall assist any homeowner in understanding the construction to be performed. This includes attending a walk-through appointment with the homeowner and Contractor where such decisions must be made.
- f. CM may be asked, at the State's option, to coordinate personal contents storage for the homeowner, to include (1) the acquisition, delivery, and removal of storage pods and/or

lockers; and (2) the processing of homeowner storage reimbursement per NCORR's Temporary Relocation Assistance policy.

- g. NCORR has prepared contract templates to be signed between a Contractor and homeowner with CM administering the contract on behalf of NCORR. CM will work with NCORR to make any recommended adjustments and then be responsible for drafting each agreement as per the homeowner award and approved scope.
- h. Payment points and schedules will be refined with the CM as per program policies and NCORR capacity. Considerations will be given to support the payment needs of smaller-size Contractors. CM and NCORR will have to confirm the payment schedule prior to execution of the Contractor's contract to ensure prompt payment of Contractor's payment applications. The CM shall work with NCORR to refine and enforce payment schedules and requests.
- i. CM shall be responsible for contract management and implementation with the selected Contractor throughout the construction period to closeout. These items may include but not be limited to:
 - 1. Permitting and zoning coordination as required by the Contractors.
 - 2. Site conditions and personal contents storage coordination for homeowners.
 - 3. Notice to proceed as approved by NCORR.
 - 4. Progress payment review and submission to NCORR.
 - 5. Progress payment schedule and quality inspections.
 - 6. Collection and verification of Section 3 and M/W/DBE reporting.
 - 7. Change order coordination and approval (architectural and engineering review or facilitation).
 - 8. Verification of bonding, insurance, and lien waivers.
 - 9. Substantial completion and final punch list coordination.
 - 10. Scope and quality of work preliminary dispute resolution.
 - 11. Warranty walkthrough, binder, and claim facilitation.
 - 12. Assist NCORR with documenting compliance with all other federal and state requirements associated with the project.
 - 13. Ensuring that the contract includes language that homeowner and Contractor may not contract to do any additional work on the home that is outside of the NCORR- and CM-approved Scope of Work. If homeowner desires Contractor to do additional work, then that additional work must be done under a separate contract and only after the HRP project is finished and closed out.
- j. CM shall review Contractor's construction documents to verify that they were prepared by licensed North Carolina design and/or engineering professionals and comply with the CDBG-DR rules, HRP, grant eligibility determination, and the prices included in contract. Contractor shall provide all construction documents to CM via the State's System of Record. CM may request hard copies and pay Contractor and/or its designer for any copying costs. CM must verify that Contractor's construction documents have been submitted and approved by the local authority having jurisdiction (AHJ) and obtain a copy of the building permit from AHJ and upload a copy of the permit into the State's System of Record.

- k. CM shall ensure Contractor has obtained: all necessary consents from homeowners to access property and structures; authorization to perform only the work authorized under the CDBG-DR HRP and the specific work order approved by NCORR; consent to digital photography or videography of the construction area prior to, during and after construction; proof of insurance from contractor and subcontractors in effect at the time work commences on any home including Builders' Risk coverage, commercial liability coverage, and workers' compensation coverage, which shall remain in effect during the entire rehabilitation, reconstruction, replacement or elevation project; payment and performance bonds, as required, in effect during construction and/or such other appropriate documentation to prevent mechanics' liens from being recorded in the land records against the homeowner limited to HRP construction, and to avoid non-payments to subcontractors/suppliers, etc.
- l. CM shall ensure that Contractors and subcontractors have provided homeowners with the CM's contact information, and written notice of the initial dispute resolution and appeals process, and have received written verification from homeowner of receipt. That written verification will be uploaded into the State's System of Record
- m. CM shall manage all construction meetings with contractors and homeowners to include but not limited to: project walkthrough conference, site inspections, payment inspections, any Cease and Desist/Stop Work Order (if meeting required), change order (if meeting required), and final walkthrough (including punch list).
- n. CM shall confirm that Contractors and/or subcontractors have project safety plans in place and all field personnel have received the appropriate safety training prior to start of rehabilitation or reconstruction work including but not limited to: temporary toilet facilities (if needed); making sure all notices have been provided to Contractor and subcontractors of state and federal OSHA requirements, prohibition of possessing firearms at project sites, and prohibition against use of drugs and alcohol at project sites/performing construction; acknowledgement by Contractors and subcontractors in writing that their employees will, when working in or around a home, conduct themselves in a professional manner and interact with occupants of the home in a respectful manner and their employees must avoid using or displaying profanity, obscene, sexual, sexist, racial, or any other inappropriate language, music or images in the presence of any occupant of the home, and that Contractors and subcontractors have a progressive discipline policy in place prior to the start of any rehabilitation, reconstruction, replacement or elevation project.
- o. CM shall ensure that any required builder/contractor surveys, site plans and elevation plans have been produced and approved prior to construction as required by local zoning and permitting. If an elevation project, CM will verify that a licensed North Carolina land surveyor has completed certified surveys of the home prior to construction and has completed a final as-built survey that the home was elevated to the height required by HRP and grant eligibility determination.
- p. CM shall ensure that Contractor and its subcontractors comply with all state and federal safety requirements, including hazardous materials, mold, lead and asbestos safe handling practices.

- q. CM shall oversee Contractor through all construction phases to include but not limited to site prep/grading, abatement (e.g. lead-based paint, asbestos and environmental abatement), foundation (including all underground plumbing, electrical & gas line), dry-in (framing, exterior doors, windows, roofing, weatherization and exterior siding/masonry), rough-in (plumbing, mechanical, electrical and gas), insulation, drywall, interior trim/doors, painting, carpet and flooring, cabinets and countertop, finish (electrical, plumbing, mechanical & gas), hookup and punch list.
- r. CM shall conduct periodic monitoring of home construction during all construction phases. CM shall issue progress inspection reports for each inspection.
- s. CM shall confirm that inspections of construction/site, including inspections of finished systems for code compliance (which includes all finished components and systems installation, testing, and functioning according to manufacturer specifications) are performed as required by law.
- t. CM shall assist the homeowner with questions regarding the work being performed and assist NCORR in any necessary mediation between the homeowner and Contractor/subcontractor.
- u. CM shall issue any required notices of non-conformance or stop work orders to Contractor when there are issues that are safety related, when work will be covered before the corrections or AHJ inspection, or when work will be performed that is outside the scope of the work order for the home without an approved change order
- v. CM shall conduct progress payment inspections to ensure compliance with construction requirements, construction timelines and deadlines, assigned Scope of Work, required permits, applicable building codes, zoning requirements, house plan specifications and minimum structural elevation per the Federal Emergency Management Agency's (FEMA) Elevation Certificate. CM shall require Contractor and its subcontractors to provide copies of all bills, invoices, delivery tickets and prevailing wage certifications (as applicable) with all progress payment applications. CM shall verify all payment applications and supporting documentation are uploaded into State System of Record before CM certifies payment to Contractor. CM and NCORR will establish the payment schedule for Contractors and have Contractors set up accounts with the State to set electronic payments on Contractor's approved payment applications.
- w. CM shall coordinate all prequalified or assigned Contractor's requests for plan, specification, Bid Book pricing, and/or scope of work clarifications. CM shall ensure sufficient and proper information is provided by the appropriate licensed approved professional. CM will manage and help coordinate reasonable decisions with NCORR and homeowners on approval of any and all change orders. A modified version of the N.C. State Construction Office General Condition for changes and requests for time extensions is included in the terms and conditions of this RFP (see Attachment H). This is as per the terms and conditions with Contractors assigned to projects.
- x. CM shall review all proposed warranties that Contractor and subcontractors will provide the homeowner and NCORR upon completion of HRP Project to make sure the warranties are

in compliance with and/or consistent with HRP. CM shall work with Contractor to ensure that all warranties and guarantees of workmanship are furnished to homeowners upon completion of a HRP Contract. Contractor and subcontractors may not limit or exclude required warranties or warranties implied by law.

- y. CM shall perform final inspections (all work complete, including but not limited to change orders, and tender of all warranties/guarantees to homeowner) before final payment as provided for in Attachment H.
- z. CM shall ensure compliance by Contractors with the AHJ and any other necessary certifying authority (e.g. the North Carolina State Building Code, county/municipal building code, and zoning codes, ordinances and/or requirements, industry standards, minimum property standards, and HUD-required green building standards).
- aa. CM shall ensure compliance by Contractors with terms and conditions found in 19-RFP-014364-WAX and its addenda—terms which include, but are not limited to, compliance with cross-cutting Federal regulations that include Section 3 of the Housing and Urban Development Act, minority- and women-owned business hiring, environmental and labor rules, equal employment opportunity, among others.
- bb. CM will complete all NCORR- and other required forms related to the above mentioned construction management services for closing out a contract for each home managed. CM shall complete and submit to NCORR's System of Record all the applicable documents to include but not limited to the following forms:
 - 1. Progress Inspection Report;
 - 2. Final Housing Inspection and Lien Release (include copies of any certificate of occupancy by AHJ and/or final acceptance by an architect (if applicable) and CM signing the required NCORR/CDBG-DR form that HRP project was completed (approve/disapprove/sign and date);
 - 3. Photos of Completed Work to support payment application request items; and
 - 4. Such other contract closeout documentation that may be required in Contractor's construction documents and/or the Construction General Conditions in Attachment H.
- cc. CM shall coordinate with NCORR and its system of record developers to produce an automated weekly status report on construction program and projects. Before an automated report is created in NCORR's system of record, CM shall provide such reports electronically to NCORR.

5.1.1 INITIAL MILESTONES

Included within the Scope of Work, CM shall accomplish the following milestones. The goals for completion are listed for each milestone below and are estimates. These goals are subject to revision and Offeror(s) may propose alternative timelines for the milestones. The State reserves the right to retain these activities within program management hourly pricing and invoicing, or incorporate the ongoing activity

into unit pricing and invoicing (if the contract's pricing is converted to unit pricing, as per Section 4.4).

In the RFP Response, Offeror(s) shall provide a short narrative for your approach to each of these items and any other recommendation you think enhances our scoring to your approach.

Milestone 1 (to be completed within 3 months):

Review, provide samples, and draft Standard Operation Procedure for construction management. After CM accomplishes this milestone and NCORR approves the Standard Operating Procedure, CM shall continue to provide updates as per program design, CM recommendations, and NCORR policy and protocol development.

Milestone 2 (to be completed within 1 month):

Review and recommend updates to the State's pre-qualification process for Contractors, to include designing and refining the Contractors batch-bid method to meet federal and state procurement requirements, achieve cost reasonableness, and support award of select Contractors within the pre-qualified pool. Review and provide recommendations on any ongoing revised bid book material pricing needs. After CM accomplishes this milestone, CM shall manage periods of new intake and qualification of Contractors at least once a year during the term of the contract.

Milestone 3 (to be completed within 3 months):

Review, provide samples, and draft a construction management process map and sub-process maps that will inform program design, policy needs, and Salesforce system of record document uploads. CM shall provide a team of experts to guide development of these maps so that the policy and protocol decisions are reflected in the Program's agreements, forms, and system of record. These maps shall cover the period of time from when a homeowner is notified of an award until the homeowner's project closeout.

Attachment J to this RFP is the current draft process map that will require additional assistance from CM on protocols and recommendations for managing:

1. Contingency budgeting and any ongoing change order requests
2. Bid batching, contractor selection, and owner construction agreement signing procedures
3. Homeowner contents storage coordination via either pod delivery or homeowner credit for personal storage locker
4. Liability and safety documentation for insurance including adjacent attached structures or properties
5. Various survey needs related but not limited to: elevation cert, property boundary survey, environmental remediation
6. Zoning and building permit coordination, assistance and review subprocess with assigned GC
7. Final punch and substantial completion
8. Re-occupancy certification and ongoing warranty inquiry assistance
9. Incremental payment inspection/review/submissions

Milestone 4 (to be completed within 2 months):

Assist client legal team in reviewing and finalizing draft homeowner construction agreement as per federal and state requirements and to facilitate program policies and design, and developing a set of instructions and FAQs for prequalified contractors and homeowners regarding the construction process.

Milestone 5 (to be completed within 2 months):

Training Contractors on draw processing and Section 3 and M/W/DBE reporting protocols. (Protocols will be developed under Milestone 1.)

Milestone 6 (to be completed within 4 months):

Assist NCORR's system of record developer in creating construction pipeline reporting modules in the system of record, which allows for monitoring any given homeowner address progress through all construction phases.

5.2 TRANSITION ASSISTANCE:

If this Contract is not renewed at the end of this term, or is canceled prior to its expiration, for any reason, Offeror shall provide, at the option of NCORR, up to 2 months after such end date all such reasonable transition assistance requested by NCORR, to allow for the expired or canceled portion of the Services to continue without interruption or adverse effect, and to facilitate the orderly transfer of such services to NCORR or its designees. If NCORR exercises this option, the Parties agree that such transition assistance shall be deemed to be governed by the terms and conditions of this Contract (notwithstanding this expiration or cancellation), except for those Contract terms or conditions that do not reasonably apply to such transition assistance. NCORR shall pay Offeror for any resources utilized in performing such transition assistance at the most current rates provided by the Contract for performance of the services or other resources utilized.

6.0 CONTRACT ADMINISTRATION

6.1 PROJECT MANAGER AND CUSTOMER SERVICE

Offeror(s) shall designate and make available to NCORR a project manager. The project manager shall be NCORR's point of contact for contract related issues and issues concerning performance, progress review, scheduling and service.

6.2 POST AWARD MANAGEMENT REVIEW MEETINGS

CM, at the request of NCORR, shall meet periodically with NCORR for Project Review meetings, which may be weekly, bi-weekly and/or monthly as requested by NCORR. The purpose of these meetings will be to review project progress reports, discuss Offeror and NCORR performance, Contractors'/subcontractors' performance, Contractors' schedules, homeowner issues and complaints, address outstanding issues, review problem resolution, provide direction, status and issues regarding payments to Contractors or subcontractors, evaluate continuous improvement and cost saving ideas, and discuss any other pertinent topics.

6.3 DISPUTE RESOLUTION

The parties agree that it is in their mutual interest to resolve disputes informally. A claim by Offeror shall be submitted in writing to NCORR's Contract Lead for resolution. A claim by NCORR shall be submitted in writing to Offeror's Project Manager for resolution. The Parties shall negotiate in good faith and use all

reasonable efforts to resolve such dispute(s). NCORR may place vendor complaint letters in the procurement file for Offerors which will state whether or not Offeror is performing responsibly. This letter may be used to recommend that Offeror not be permitted to do business with the State and may be used as information on the performance of Offeror, should information be requested by agencies in making procurement decisions. During the time the Parties are attempting to resolve any dispute, each shall proceed diligently to perform their respective duties and responsibilities under this Contract. If a dispute cannot be resolved between the Parties within thirty (30) days after delivery of notice, either Party may elect to exercise any other remedies available under this Contract, or at law. This term shall not constitute an agreement by either party to mediate or arbitrate any dispute.

6.4 CONTRACT CHANGES

Contract changes, if any, over the life of the contract shall be implemented by contract amendments agreed to in writing by NCORR and CM(s).

ATTACHMENT A**CERTIFICATION REGARDING LOBBYING**

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No federal appropriated funds have been paid or will be paid by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
2. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federally funded contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form SF-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award document for sub-awards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) who receive federal funds of \$100,000.00 or more and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000.00 and not more than \$100,000.00 for each such failure.

Authorized Signature

Title

Firm

Date

ATTACHMENT B**CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY
AND VOLUNTARY EXCLUSION--LOWER TIER COVERED
TRANSACTIONS**

Note: The phrase "prospective lower tier participant" means providers under contract with NCORR.

1. By signing and submitting this document, the prospective lower tier participant is providing the certification set out below.
2. The certification in this clause is a material representation of the fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originate may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to whom this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549, 45 CFR Part 76, 44 CFR Part 67. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter any lower tier covered transaction with a person who is debarred, suspended, determined ineligible or voluntarily excluded from participation in this covered transaction unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this document that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency of which it determines the eligibility of its principals. Each participant may, but is not required to, check the Non-Procurement List.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of

records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized in paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension, and/or debarment.
10. The prospective lower tier participant certifies, by submission of this document, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, nor voluntarily excluded from participation in this transaction by any federal or state department or agency.
11. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Authorized Signature

Title

Firm

Date

ATTACHMENT C**HISTORICALLY UNDERUTILIZED BUSINESSES CERTIFICATION**

Historically Underutilized Businesses (HUBs) consist of minority, women and disabled business firms that are at least fifty-one percent owned and operated by an individual(s) of the categories. Also included in this category are disabled business enterprises and non-profit work centers for the blind and severely disabled.

Pursuant to G.S. 143B-1361(a), 143-48 and 143-128.4, the State invites and encourages participation in this procurement process by businesses owned by minorities, women, disabled, disabled business enterprises and non-profit work centers for the blind and severely disabled. This includes utilizing subcontractors to perform the required functions in this RFP. Any questions concerning NC HUB certification, contact the [North Carolina Office of Historically Underutilized Businesses](#) at (919) 807-2330. The Vendor shall respond to question #1 and #2 below.

a) Is Vendor a Historically Underutilized Business? ☐ Yes ☐ No

b) Is Vendor Certified with North Carolina as a Historically Underutilized Business? ☐ Yes ☐ No

If _____ so, _____ state _____ HUB _____ classification:

ATTACHMENT D**INSTRUCTIONS TO OFFERORS**

1. **READ, REVIEW AND COMPLY:** It shall be Offeror's responsibility to read this entire document, review all enclosures and attachments, and any addenda thereto, and comply with all requirements specified herein, regardless of whether appearing in these Instructions to Offerors or elsewhere in this RFP.
2. **LATE PROPOSALS:** Late proposals, regardless of cause, will not be opened or considered, and will automatically be disqualified from further consideration. It shall be Offeror's sole responsibility to ensure delivery at the designated office by the designated time.
3. **ACCEPTANCE AND REJECTION:** The State reserves the right to reject any and all proposals, to waive any informality in proposals and, unless otherwise specified by Offeror, to accept any item in the proposal. If either a unit price or an extended price is obviously in error and the other is obviously correct, the incorrect price will be disregarded.
4. **BASIS FOR REJECTION:** Pursuant to 01 NCAC 05B .0501, the State reserves the right to reject any and all offers, in whole or in part, by deeming the offer unsatisfactory as to quality or quantity, delivery, price or service offered, non-compliance with the requirements or intent of this solicitation, lack of competitiveness, error(s) in specifications or indications that revision would be advantageous to the State, cancellation or other changes in the intended project or any other determination that the proposed requirement is no longer needed, limitation or lack of available funds, circumstances that prevent determination of the best offer, or any other determination that rejection would be in the best interest of the State.
5. **EXECUTION:** Failure to sign the EXECUTION PAGE in the indicated space will render proposal non-responsive, and it shall be rejected.
6. **ORDER OF PRECEDENCE:** In cases of conflict between specific provisions in this solicitation or those in any resulting contract, the order of precedence shall be (high to low) (1) any special terms and conditions specific to this RFP, including any negotiated terms; (2) any addenda to the RFP; (3) requirements and specifications in Sections 4, 5 and 6 of this RFP; (4) the rest of the RFP; (5) North Carolina General Contract Terms and Conditions in ATTACHMENT E: NORTH CAROLINA GENERAL CONTRACT TERMS AND CONDITIONS; (6) Instructions in Section 2.2; and (7) Offeror's Proposal.
7. **INFORMATION AND DESCRIPTIVE LITERATURE:** Offeror shall furnish all information requested and in the spaces provided in this document. Further, if required elsewhere in this proposal, each Offeror must submit with their proposal sketches, descriptive literature and/or complete specifications covering the products offered. Reference to literature submitted with a previous proposal or available elsewhere will not satisfy this provision. Proposals that do not comply with these requirements shall be subject to rejection without further consideration.

8. **CERTIFICATE TO TRANSACT BUSINESS IN NORTH CAROLINA:** As a condition of contract award, each out-of-State Vendor that is a corporation, limited-liability company or limited-liability partnership shall have received, and shall maintain throughout the term of The Contract, a Certificate of Authority to Transact Business in North Carolina from the North Carolina Secretary of State, as required by North Carolina law. A State contract requiring only an isolated transaction completed within a period of six months, and not in the course of a number of repeated transactions of like nature, shall not be considered as transacting business in North Carolina and shall not require a Certificate of Authority to Transact Business.
9. **SUSTAINABILITY:** To support the sustainability efforts of the State of North Carolina we solicit your cooperation. Pursuant to Executive Order 156 (1999), it is desirable that all responses meet the following:
- All copies of the proposal are printed double sided.
 - All submittals and copies are printed on recycled paper with a minimum post-consumer content of 30%.
 - Unless absolutely necessary, all proposals and copies should minimize or eliminate use of non-recyclable or non-reusable materials such as plastic report covers, plastic dividers, vinyl sleeves, and GBC binding. Three-ringed binders, glued materials, paper clips, and staples are acceptable.
 - Materials should be submitted in a format which allows for easy removal, filing and/or recycling of paper and binder materials. Use of oversized paper is strongly discouraged unless necessary for clarity or legibility.
10. **HISTORICALLY UNDERUTILIZED BUSINESSES:** The State is committed to retaining Vendors from diverse backgrounds, and it invites and encourages participation in the procurement process by businesses owned by minorities, women, disabled, disabled business enterprises and non-profit work centers for the blind and severely disabled. In particular, the State encourages participation by Vendors certified by the State Office of Historically Underutilized Businesses, as well as the use of HUB-certified vendors as subcontractors on State contracts.
11. **INELIGIBLE VENDORS:** As provided in G.S. 147-86.59 and G.S. 147-86.82, the following companies are ineligible to contract with the State of North Carolina or any political subdivision of the State: a) any company identified as engaging in investment activities in Iran, as determined by appearing on the Final Divestment List created by the State Treasurer pursuant to G.S. 147-86.58, and b) any company identified as engaged in a boycott of Israel as determined by appearing on the List of restricted companies created by the State Treasurer pursuant to G.S. 147-86.81. A contract with the State or any of its political subdivisions by any company identified in a) or b) above shall be void *ab initio*.
12. **CONFIDENTIAL INFORMATION:** To the extent permitted by applicable statutes and rules, the State will maintain confidential trade secrets that Offeror does not wish disclosed. As a condition to confidential treatment, each page containing trade secret information shall be identified in boldface at the top and bottom as "CONFIDENTIAL" by Offeror, with specific trade secret information enclosed in boxes or similar indication. Cost information shall not be deemed confidential under any circumstances. Regardless of what Offeror may label as a trade secret, the determination whether it is or is not entitled to protection will be determined in accordance with N.C.G.S. § 132-1.2. Any material labeled as confidential constitutes a representation by Offeror that it has made a reasonable effort in good faith to determine that such material is, in fact, a trade secret under N.C.G.S. § 132-1.2. Offerors

are urged and cautioned to limit the marking of information as a trade secret or as confidential so far as is possible.

- 13. PROTEST PROCEDURES:** If Offeror wishes to protest a Contract resulting from this solicitation that is awarded by the Division of Purchase and Contract, or awarded by an agency in an awarded amount of at least \$25,000, Offeror shall submit a written request addressed to the State Purchasing Officer at Purchase and Contract, 1305 Mail Service Center, Raleigh, NC 27699-1305. A protest request related to an award amount of less than \$25,000 shall be sent to the purchasing officer of the agency that issued the award. The protest request must be received in the proper office within thirty (30) consecutive calendar days from the date of the Contract award. Protest letters **shall** contain specific grounds and reasons for the protest, how the protesting party was harmed by the award made and any documentation providing support for the protesting party's claims. **Note:** Contract award notices are sent only to Offeror actually awarded the Contract, and not to every person or firm responding to a solicitation. Proposal status and Award notices are posted on the Internet at <https://www.ips.state.nc.us/ips/>. All protests will be handled pursuant to the North Carolina Administrative Code, 01 NCAC 05B .1519.
- 14. MISCELLANEOUS:** Masculine pronouns shall be read to include feminine pronouns, and the singular of any word or phrase shall be read to include the plural and vice versa.
- 15. COMMUNICATIONS BY VENDORS:** In submitting its proposal, Offeror agrees not to discuss or otherwise reveal the contents of its proposal to any source, government or private, outside of the using or issuing agency until after the award of the Contract or cancellation of this RFP. All Offerors are forbidden from having any communications with the using or issuing agency, or any other representative of the State concerning the solicitation, during the evaluation of the proposals (i.e., after the public opening of the proposals and before the award of the Contract), unless the State directly contacts Offeror(s) for purposes of seeking clarification or another reason permitted by the solicitation. Offeror shall not: (a) transmit to the issuing and/or using agency any information commenting on the ability or qualifications of any other Offeror to provide the advertised good, equipment, commodity; (b) identify defects, errors and/or omissions in any other Offeror's proposal and/or prices at any time during the procurement process; and/or (c) engage in or attempt any other communication or conduct that could influence the evaluation and/or award of the Contract that is the subject of this RFP. Offerors not in compliance with this provision may be disqualified, at the option of the State, from the Contract award. Only those communications with the using agency or issuing agency authorized by this RFP are permitted.
- DISQUALIFICATION OF OFFEROR: Any or all proposals may be rejected if NCORR believes that collusion exists among Offerors. Proposals in which the prices are obviously unbalanced may be rejected. If multiple proposals are submitted by Offeror and after the proposals are opened, one of the proposals is withdrawn, the result will be that all of the proposals submitted by that Offeror will be withdrawn; however, nothing herein prohibits Offeror from submitting multiple proposals - for different products or services.
- 16. POTENTIAL CONFLICTS OF INTEREST:** An outside Consultant or contractor of NCORR or DPS is prohibited from submitting a proposal for services on the scope of work in this NCORR RFP if that consultant or contractor assisted NCORR, directly or indirectly, in creating the scope of work in this RFP (consultant or contractor including any drafter, designer or other previous contributor to NCORR or DPS including any affiliate, subsidiary, joint venturer or was in any other manner associated by ownership to any party who assisted NCORR and/or DPS in developing this RFP). If such a consultant or contractor submits a prohibited proposal, that proposal shall be disqualified on the basis of conflict of

interest, no matter when the conflict is discovered by NCORR. **Note: It is permissible for Offeror to submit a proposal in response to this RFP to serve as a construction manager in a specific geographical area/counties and seek prequalification as a Contractor in a geographical area/counties that it does not seek to serve as a construction manager for NCORR. Offeror may submit a proposal pursuant to this RFP for all services as well as a proposal to be prequalified for all work in all counties and, if selected as a CM and prequalified for all counties, NCORR may enter into negotiations with Offeror for Best and Final Offers for one or both contract awards so that the resulting contract and/or prequalification does not have Offeror serving as CM and Contractor for the same HRP projects.**

17. **TABULATIONS:** Proposal tabulations can be electronically retrieved at the Interactive Purchasing System (IPS), <https://www.ips.state.nc.us/ips/BidNumberSearch.aspx>. Click on the IPS BIDS icon, click on Search for Bid, enter the proposal number, and then search. Tabulations will normally be available at this website not later than one working day after the proposal opening. Lengthy or complex tabulations may be summarized, with other details not made available on IPS, and requests for additional details or information concerning such tabulations cannot be honored.
18. **VENDOR REGISTRATION AND SOLICITATION NOTIFICATION SYSTEM:** The North Carolina electronic Offeror Portal (eVP) allows Offerors to electronically register free with the State to receive electronic notification of current procurement opportunities for goods and services of potential interests to them available on the Interactive Purchasing System, as well as notifications of status changes to those solicitations. Online registration and other purchasing information is available at the following website <https://www.ips.state.nc.us/>.
19. **WITHDRAWAL OF PROPOSAL:** A Proposal may be withdrawn only in writing and actually received by the office issuing the RFP prior to the time for the opening of Proposals identified on the cover page of this RFP (or such later date included in an Addendum to the RFP). A withdrawal request must be on Offeror's letterhead and signed by an official of Offeror authorized to make such request. Any withdrawal request made after the opening of Proposals shall be allowed only for good cause shown and in the sole discretion of the Division of Purchase and Contract.
20. **INFORMAL COMMENTS:** The State shall not be bound by informal explanations, instructions or information given at any time by anyone on behalf of the State during the competitive process or after award. The State is bound only by information provided in this RFP and in formal Addenda issued through IPS.
21. **COST FOR PROPOSAL PREPARATION:** Any costs incurred by Offeror in preparing or submitting offers are Offeror's sole responsibility; the State of North Carolina will not reimburse any Offeror for any costs incurred prior to award.
22. **VENDOR'S REPRESENTATIVE:** Each Offeror shall submit with its proposal the name, address, and telephone number of the person(s) with authority to bind the firm and answer questions or provide clarification concerning the firm's proposal.
23. **SUBCONTRACTING:** Unless expressly prohibited, Offeror may propose to subcontract portions of the work to identified subcontractor(s), provided that its proposal clearly describe what work it plans to subcontract and that Offeror includes in its proposal all information regarding employees, business experience, and other information for each proposed subcontractor that is required to be provided for Offeror itself.

- 24. INSPECTION AT VENDOR'S SITE:** The State reserves the right to inspect, at a reasonable time, the equipment/item, plant or other facilities of a prospective Offeror prior to Contract award, and during the Contract term as necessary for the State's determination that such equipment/item, plant or other facilities conform with the specifications/requirements and are adequate and suitable for the proper and effective performance of the Contract.

ATTACHMENT E**NORTH CAROLINA GENERAL CONTRACT TERMS & CONDITIONS****1. PERFORMANCE AND DEFAULT:**

- a) It is anticipated that the tasks and duties undertaken by the Vendor shall include services or the manufacturing, furnishing, or development of goods and other tangible features or components as deliverables that are directly correlated and/or ancillary to the services performed. Except as provided immediately below, and unless otherwise mutually agreed in writing prior to award, any service deliverables or ancillary services provided by Vendor in performance of the contract shall remain property of the State. During performance, Vendor may provide proprietary components as part of the service deliverables that are identified in the solicitation response. Vendor grants the State a personal, permanent, non-transferable license to use such proprietary components of the service deliverables and other functionalities, as provided under this Agreement. Any technical and business information owned by Vendor or its suppliers or licensors made accessible or furnished to the State shall be and remain the property of the Vendor or such other party, respectively. Vendor agrees to perform its services under the contract in the same or similar manner provided to comparable users. The State shall notify the Vendor of any defects or deficiencies in performance of its services or failure of service deliverables to conform to the standards and specifications provided in this solicitation. Vendor agrees to remedy defective performance or any nonconforming deliverables upon timely notice provided by the State.
- b) Vendor has a limited, non-exclusive license to access and use State Data provided to Vendor, but solely for performing its obligations under this Agreement and in confidence as may be further provided herein. Vendor or its suppliers shall at a minimum, and except as otherwise specified and agreed herein, provide assistance to the State related to all services performed or deliverables procured hereunder during the State's normal business hours. Vendor warrants that its support, customer service, and assistance will be performed in accordance with generally accepted and applicable industry standards.
- c) If, through any cause, Vendor shall fail to fulfill in a timely and proper manner the obligations under The Contract, the State shall have the right to terminate The Contract by giving written notice to the Vendor and specifying the effective date thereof. In that event, any or all finished or unfinished deliverables under The Contract prepared by the Vendor shall, at the option of the State, become its property, and the Vendor shall be entitled to receive just and equitable compensation for any acceptable work completed as to which the option is exercised. Notwithstanding, Vendor shall not be relieved of liability to the State for damages sustained by the State by virtue of any breach of The Contract, and the State may withhold any payment due the Vendor for the purpose of setoff until such time as the exact amount of damages due the State from such breach can be determined. The State may require at any time a performance bond or other acceptable alternative performance guarantees from a Vendor without expense to the State.
- d) In the event of default by the Vendor, the State may procure the goods and services necessary to complete performance hereunder from other sources and hold the Vendor responsible for any excess cost occasioned thereby. In addition, in the event of default by the Vendor under The

Contract, or upon the Vendor filing a petition for bankruptcy or the entering of a judgment of bankruptcy by or against the Vendor, the State may immediately cease doing business with the Vendor, immediately terminate The Contract for cause, and may take action to debar the Vendor from doing future business with the State.

2. **GOVERNMENTAL RESTRICTIONS:** In the event any Governmental restrictions are imposed which necessitate alteration of the goods, material, quality, workmanship or performance of the Services offered prior to acceptance, it shall be the responsibility of the Vendor to notify the Contract Lead at once, in writing, indicating the specific regulation which required such alterations. The State reserves the right to accept any such alterations, including any price adjustments occasioned thereby, or to cancel the Contract.
3. **AVAILABILITY OF FUNDS:** Any and all payments to the Vendor shall be dependent upon and subject to the availability of funds to the agency for the purpose set forth in The Contract.
4. **TAXES:** Any applicable taxes shall be invoiced as a separate item.
 - a. G.S. 143-59.1 bars the Secretary of Administration from entering into Contracts with Vendors if the Vendor or its affiliates meet one of the conditions of G.S. 105-164.8(b) and refuses to collect use tax on sales of tangible personal property to purchasers in North Carolina. Conditions under G.S. 105-164.8(b) include: (1) Maintenance of a retail establishment or office, (2) Presence of representatives in the State that solicit sales or transact business on behalf of the Vendor and (3) Systematic exploitation of the market by media-assisted, media-facilitated, or media-solicited means. By execution of the proposal document the Vendor certifies that it and all of its affiliates, (if it has affiliates), collect(s) the appropriate taxes.
 - b. The agency(ies) participating in The Contract are exempt from Federal Taxes, such as excise and transportation. Exemption forms submitted by the Vendor will be executed and returned by the using agency.
 - c. Prices offered are not to include any personal property taxes, nor any sales or use tax (or fees) unless required by the North Carolina Department of Revenue.
5. **SITUS AND GOVERNING LAWS:** This Contract is made under and shall be governed and construed in accordance with the laws of the State of North Carolina, without regard to its conflict of laws rules, and within which State all matters, whether sounding in Contract or tort or otherwise, relating to its validity, construction, interpretation and enforcement shall be determined.
6. **PAYMENT TERMS:** Payment terms are Net not later than 30 days after receipt of a correct invoice or acceptance of goods, whichever is later. The using agency is responsible for all payments to the Vendor under the Contract. Payment by some agencies may be made by procurement card, if the Vendor accepts that card (Visa, MasterCard, etc.) from other customers, and it shall be accepted by the Vendor for payment under the same terms and conditions as any other method of payment accepted by the Vendor. If payment is made by procurement card, then payment may be processed immediately by the Vendor.
7. **AFFIRMATIVE ACTION:** The Vendor will take affirmative action in complying with all Federal and State requirements concerning fair employment and employment of people with disabilities and

concerning the treatment of all employees without regard to discrimination on the basis of any prohibited grounds as defined by Federal and State law.

8. **CONDITION AND PACKAGING:** Unless otherwise provided by special terms and conditions or specifications, it is understood and agreed that any item offered or shipped has not been sold or used for any purpose and shall be in first class condition. All containers/packaging shall be suitable for handling, storage or shipment.
9. **INTELLECTUAL PROPERTY WARRANTY AND INDEMNITY:** Vendor shall hold and save the State, its officers, agents and employees, harmless from liability of any kind, including costs and expenses, resulting from infringement of the rights of any third party in any copyrighted material, patented or patent-pending invention, article, device or appliance delivered in connection with The Contract.
- a. Vendor warrants to the best of its knowledge that:
 - i. Performance under The Contract does not infringe upon any intellectual property rights of any third party; and
 - ii. There are no actual or threatened actions arising from, or alleged under, any intellectual property rights of any third party;
 - b. Should any deliverables supplied by Vendor become the subject of a claim of infringement of a patent, copyright, trademark or a trade secret in the United States, the Vendor, shall at its option and expense, either procure for the State the right to continue using the deliverables, or replace or modify the same to become non-infringing. If neither of these options can reasonably be taken in Vendor's judgment, or if further use shall be prevented by injunction, the Vendor agrees to cease provision of any affected deliverables and refund any sums the State has paid Vendor and make every reasonable effort to assist the State in procuring substitute deliverables. If, in the sole opinion of the State, the cessation of use by the State of any such deliverables due to infringement issues makes the retention of other items acquired from the Vendor under this Agreement impractical, the State shall then have the option of terminating the Agreement, or applicable portions thereof, without penalty or termination charge; and Vendor agrees to refund any sums the State paid for unused Services or Deliverables.
 - c. The Vendor, at its own expense, shall defend any action brought against the State to the extent that such action is based upon a claim that the deliverables supplied by the Vendor, their use or operation, infringes on a patent, copyright, trademark or violates a trade secret in the United States. The Vendor shall pay those costs and damages finally awarded or agreed in a settlement against the State in any such action. Such defense and payment shall be conditioned on the following:
 - i. That the Vendor shall be notified within a reasonable time in writing by the State of any such claim; and
 - ii. That the Vendor shall have the sole control of the defense of any action on such claim and all negotiations for its settlement or compromise provided, however, that the State shall have the option to participate in such action at its own expense.
 - d. Vendor will not be required to defend or indemnify the State if any claim by a third party against the State for infringement or misappropriation results from the State's material alteration of any Vendor-branded deliverables or services, or from the continued use of the deliverable(s) or Services after receiving notice of infringement on a trade secret of a third party.
10. **TERMINATION FOR CONVENIENCE:** If this contract contemplates deliveries or performance over a period of time, the State may terminate this contract at any time by providing 60 days' notice in

writing from the State to the Vendor. In that event, any or all finished or unfinished deliverables prepared by the Vendor under this contract shall, at the option of the State, become its property. If the contract is terminated by the State as provided in this section, the State shall pay for those items for which such option is exercised, less any payment or compensation previously made.

11. **ADVERTISING:** Vendor agrees not to use the existence of The Contract or the name of the State of North Carolina as part of any commercial advertising or marketing of products or Services. A Vendor may inquire whether the State is willing to act as a reference by providing factual information directly to other prospective customers.
12. **ACCESS TO PERSONS AND RECORDS:** During and after the term hereof, the State Auditor and any using agency's internal auditors shall have access to persons and records related to The Contract to verify accounts and data affecting fees or performance under the Contract, as provided in G.S. 143-49(9).
13. **ASSIGNMENT:** No assignment of the Vendor's obligations nor the Vendor's right to receive payment hereunder shall be permitted.

However, upon written request approved by the issuing purchasing authority and solely as a convenience to the Vendor, the State may:

- a. Forward the Vendor's payment check directly to any person or entity designated by the Vendor, and
- b. Include any person or entity designated by Vendor as a joint payee on the Vendor's payment check.

In no event shall such approval and action obligate the State to anyone other than the Vendor and the Vendor shall remain responsible for fulfillment of all Contract obligations. Upon advance written request, the State may, in its unfettered discretion, approve an assignment to the surviving entity of a merger, acquisition or corporate reorganization, if made as part of the transfer of all or substantially all of the Vendor's assets. Any purported assignment made in violation of this provision shall be void and a material breach of The Contract.

14. **INSURANCE:**

COVERAGE - During the term of the Contract, the Vendor at its sole cost and expense shall provide commercial insurance of such type and with such terms and limits as may be reasonably associated with the Contract. As a minimum, the Vendor shall provide and maintain the following coverage and limits:

- a) **Worker's Compensation** - The Vendor shall provide and maintain Worker's Compensation Insurance, as required by the laws of North Carolina, as well as employer's liability coverage with minimum limits of \$500,000.00, covering all of Vendor's employees who are engaged in any work under the Contract in North Carolina. If any work is sub-contracted, the Vendor shall require the sub-Contractor to provide the same coverage for any of his employees engaged in any work under the Contract within the State.
- b) **Commercial General Liability** - General Liability Coverage on a Comprehensive Broad Form on an occurrence basis in the minimum amount of \$1,000,000.00 Combined Single Limit. Defense cost shall be in excess of the limit of liability.
- c) **Automobile** - Automobile Liability Insurance, to include liability coverage, covering all owned,

hired and non-owned vehicles, used within North Carolina in connection with the Contract. The minimum combined single limit shall be \$250,000.00 bodily injury and property damage; \$250,000.00 uninsured/under insured motorist; and \$2,500.00 medical payment.

REQUIREMENTS - Providing and maintaining adequate insurance coverage is a material obligation of the Vendor and is of the essence of The Contract. All such insurance shall meet all laws of the State of North Carolina. Such insurance coverage shall be obtained from companies that are authorized to provide such coverage and that are authorized by the Commissioner of Insurance to do business in North Carolina. The Vendor shall at all times comply with the terms of such insurance policies, and all requirements of the insurer under any such insurance policies, except as they may conflict with existing North Carolina laws or The Contract. The limits of coverage under each insurance policy maintained by the Vendor shall not be interpreted as limiting the Vendor's liability and obligations under the Contract.

- 15. GENERAL INDEMNITY:** The Vendor shall hold and save the State, its officers, agents, and employees, harmless from liability of any kind, including all claims and losses accruing or resulting to any other person, firm, or corporation furnishing or supplying work, Services, materials, or supplies in connection with the performance of The Contract, and from any and all claims and losses accruing or resulting to any person, firm, or corporation that may be injured or damaged by the Vendor in the performance of The Contract and that are attributable to the negligence or intentionally tortious acts of the Vendor provided that the Vendor is notified in writing within 30 days from the date that the State has knowledge of such claims. The Vendor represents and warrants that it shall make no claim of any kind or nature against the State's agents who are involved in the delivery or processing of Vendor deliverables or Services to the State. The representation and warranty in the preceding sentence shall survive the termination or expiration of The Contract.

16. ELECTRONIC PROCUREMENT: - RESERVED

- 15. SUBCONTRACTING:** Performance under The Contract by the Vendor shall not be subcontracted without prior written approval of the State's assigned Contract Lead. Unless otherwise agreed in writing, acceptance of a Vendor's proposal shall include approval to use the subcontractor(s) that have been specified therein.
- 16. CONFIDENTIALITY:** Any State information, data, instruments, documents, studies or reports given to or prepared or assembled by or provided to the Vendor under The Contract shall be kept as confidential, used only for the purpose(s) required to perform The Contract and not divulged or made available to any individual or organization without the prior written approval of the State.
- 17. CARE OF STATE DATA AND PROPERTY:** The Vendor agrees that it shall be responsible for the proper custody and care of any data owned and furnished to the Vendor by the State (State Data), or other State property in the hands of the Vendor, for use in connection with the performance of The Contract or purchased by or for the State for The Contract. Vendor will reimburse the State for loss or damage of such property while in Vendor's custody.

The State's Data in the hands of the Vendor shall be protected from unauthorized disclosure, loss, damage, destruction by a natural event or other eventuality. Such State Data shall be returned to the State in a form acceptable to the State upon the termination or expiration of this Agreement. The Vendor shall notify the State of any security breaches within 24 hours as required by G.S. 143B-1379. See G.S.

75-60 *et seq.*

- 18. OUTSOURCING:** Any Vendor or subcontractor providing call or contact center services to the State of North Carolina or any of its agencies shall disclose to inbound callers the location from which the call or contact center services are being provided.

If, after award of a contract, the contractor wishes to relocate or outsource any portion of performance to a location outside the United States, or to contract with a subcontractor for any such performance, which subcontractor and nature of the work has not previously been disclosed to the State in writing, prior written approval must be obtained from the State agency responsible for the contract.

Vendor shall give notice to the using agency of any relocation of the Vendor, employees of the Vendor, subcontractors of the Vendor, or other persons providing performance under a State contract to a location outside of the United States.

- 23. COMPLIANCE WITH LAWS:** Vendor shall comply with all laws, ordinances, codes, rules, regulations, and licensing requirements that are applicable to the conduct of its business and its performance in accordance with The Contract, including those of federal, state, and local agencies having jurisdiction and/or authority.

- 24. ENTIRE AGREEMENT:** This RFP and any documents incorporated specifically by reference represent the entire agreement between the parties and supersede all prior oral or written statements or agreements. This RFP, any addenda hereto, and the Vendor's proposal are incorporated herein by reference as though set forth verbatim.

All promises, requirements, terms, conditions, provisions, representations, guarantees, and warranties contained herein shall survive the contract expiration or termination date unless specifically provided otherwise herein, or unless superseded by applicable Federal or State statutes of limitation.

- 25. ELECTRONIC RECORDS:** The State will digitize all Vendor responses to this solicitation, if not received electronically, as well as any awarded contract together with associated procurement-related documents. These electronic copies shall constitute a preservation record and shall serve as the official record of this procurement with the same force and effect as the original written documents comprising such record. Any electronic copy, printout or other output readable by sight shown to reflect such record accurately shall constitute an "original."

- 26. AMENDMENTS:** This Contract may be amended only by a written amendment duly executed by the State and the Vendor.

- 27. NO WAIVER:** Notwithstanding any other language or provision in The Contract, nothing herein is intended nor shall be interpreted as a waiver of any right or remedy otherwise available to the State under applicable law. The waiver by the State of any right or remedy on any one occasion or instance shall not constitute or be interpreted as a waiver of that or any other right or remedy on any other occasion or instance.

- 28. FORCE MAJEURE:** Neither party shall be deemed to be in default of its obligations hereunder if and so long as it is prevented from performing such obligations as a result of events beyond its reasonable control, including without limitation, fire, power failures, any act of war, hostile foreign action, nuclear explosion, riot, strikes or failures or refusals to perform under subcontracts, civil

insurrection, earthquake, hurricane, tornado, or other catastrophic natural event or act of God.

- 29. SOVEREIGN IMMUNITY:** Notwithstanding any other term or provision in The Contract, nothing herein is intended nor shall be interpreted as waiving any claim or defense based on the principle of sovereign immunity or other State or federal constitutional provision or principle that otherwise would be available to the State under applicable law.

ATTACHMENT F (BID PRICING BOOK)

ATTACHMENT F IS FOUND ON THE WEBSITE:

<https://www.ncdps.gov/documents/rfp-19-rfp-014364-wax>

ATTACHMENT G**FORM OF PERFORMANCE BOND**

Date of Contract: _____

Date of Execution: _____

Name of Principal
(Contractor) _____

Name of Surety: _____

Name of Contracting
Body: _____

Amount of Bond: _____

Project _____

KNOW ALL MEN BY THESE PRESENTS, that we, the principal and surety above named, are held and firmly bound unto the above named contracting body, hereinafter called the contracting body, in the penal sum of the amount stated above for the payment of which sum well and truly to be made, we bind, ourselves, our heirs, executors, administrators, and successors, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that whereas the principal entered into a certain contract with the contracting body, identified as shown above and hereto attached:

NOW, THEREFORE, if the principal shall well and truly perform and fulfill all the undertakings, covenants, terms, conditions and agreements of said contract during the original term of said contract and any extensions thereof that may be granted by the contracting body, with or without notice to the surety, and during the life of any guaranty required under the contract, and shall also well and truly perform and fulfill all the undertakings, covenants, terms, conditions and agreements of any and all duly authorized modifications of said contract that may hereafter be made, notice of which modifications to the surety being hereby waived, then, this obligation to be void; otherwise to remain in full force and virtue.

IN WITNESS WHEREOF, the above-bounden parties have executed this instrument under their several seals on the date indicated above, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

Executed in _____ counterparts.

Witness:

Contractor: (Trade or Corporate Name)

By: _____

RFP Number: 19-RFP-014582-WAX

Offeror: _____

(Proprietorship or Partnership)

Attest: (Corporation)

Title: _____
(Owner, Partner, or Corp. Pres. or Vice Pres.
only)

By: _____

Title: _____
(Corp. Sec. or Asst. Sec. only)

(Corporate Seal)

Witness:

(Surety Company)

By: _____

Title: _____
(Attorney in Fact)

Countersigned:

(Surety Corporate Seal)

(N.C. Licensed Resident Agent)

Name and Address-Surety Agency

Surety Company Name and N.C.
Regional or Branch Office Address

ATTACHMENT H**CONSTRUCTION MANAGEMENT & CONSTRUCTION TERMS & CONDITIONS****ARTICLE 1 - WORKING DRAWINGS AND SPECIFICATIONS AT THE JOB SITE**

- a. Contractor shall maintain, in readable condition at his job office, one complete set of working drawings and specifications for his work including all shop drawings. Such drawings and specifications shall be available for use by Contractor's Designer, CM and/or NCORR. A copy of the plans and specifications shall be provided the homeowner.
- b. Contractor shall maintain at the job office, a day-to-day record of work-in-place that is at variance with the contract documents. Such variations shall be fully noted on project drawings by Contractor and submitted to the designer and CM upon project completion and no later than thirty (30) days after acceptance of the project.
- c. Contractor shall maintain at the job office a record of all required tests or special inspections that have been performed, clearly indicating the scope of work inspected and the date of approval or rejection. Contractor shall make available these tests and special inspection reports available to CM, NCORR, AHJ and homeowner upon request.

ARTICLE 2 - OWNERSHIP OF DRAWINGS AND SPECIFICATIONS

All drawings and specifications are instruments of service and remain the property of Contractor and/or its designer, but owner had have a license to use drawings and specifications for future renovation or work at home. Homeowner's use of these instruments on work other than this contract without permission of Contractor is prohibited.

ARTICLE 3 - MATERIALS, EQUIPMENT, EMPLOYEES

- a. Contractor shall, unless otherwise specified, supply and pay for all labor, transportation, materials, tools, apparatus, lights, power, heat, sanitary facilities, water, scaffolding and incidentals necessary for the completion of his work, and shall install, maintain and remove all equipment of the construction, other utensils or things, and be responsible for the safe, proper and lawful construction, maintenance and use of same, and shall construct in the best and most workmanlike manner, a complete job and everything incidental thereto, as shown on the plans, stated in the specifications, or reasonably implied therefrom, all in accordance with the contract documents.
- b. All materials shall be new and of quality specified, except where reclaimed material is authorized herein and approved for use. Workmanship shall at all times be of a grade accepted as the best practice of the particular trade involved, and as stipulated in written standards of recognized organizations or institutes of the respective trades except as exceeded or qualified by the specifications.
- c. Upon notice, the contractor shall furnish evidence as to quality of materials.
- d. Products are generally specified by ASTM or other reference standard and/or by manufacturer's name and model number or trade name. When specified only by reference standard, Contractor may select any product meeting this standard, by any manufacturer. When several products or manufacturers are specified as being equally acceptable, Contractor has the option of using any

product and manufacturer combination listed. However, Contractor shall be aware that the cited examples are used only to denote the quality standard of product desired and that they do not restrict bidders to a specific brand, make, manufacturer or specific name; that they are used only to set forth and convey to bidders the general style, type, character and quality of product desired; and that equivalent products will be acceptable. Request for substitution of materials, items, or equipment shall be submitted to the designer for approval or disapproval; such approval or disapproval shall be made by the designer prior to the opening of bids. Alternate materials may be requested after the award if it can clearly be demonstrated that it is an added benefit to the owner and the designer and owner approves.

- e. CM, NCORR and/or NCORR's consultant shall be the judge of equality for proposed substitution of products, materials or equipment and whether it complies with CDBG-DR, HRP and/or grant eligibility rules, requirements and/or standards.

ARTICLE 4 - ROYALTIES, LICENSES AND PATENTS

It is the intention of the contract documents that the work covered herein will not constitute in any way infringement of any patent whatsoever unless the fact of such patent is clearly evidenced herein. Contractor shall protect and save harmless the homeowner, CM, NCORR, the State and/or HUD against suit on account of alleged or actual infringement. Contractor shall pay all royalties and/or license fees required on account of patented articles or processes, whether the patent rights are evidenced hereinafter.

ARTICLE 5 - PERMITS, INSPECTIONS, FEES, REGULATIONS

- a. Contractor shall give all notices and comply with all laws, ordinances, codes, rules and regulations bearing on the conduct of the work under this contract. If Contractor observes that the drawings and specifications are at variance therewith, he shall promptly notify the designer in writing. See Instructions to Bidders, Paragraph 3, Bulletins and Addenda. Any necessary changes required after contract award shall be made by change order in accordance with Article 19. If Contractor performs any work knowing it to be contrary to such laws, ordinances, codes, rules and regulations, and without such notice to the designer, he shall bear all cost arising therefrom. Additional requirements implemented after bidding will be subject to equitable negotiations.
- b. All work under this contract shall conform to the North Carolina State Building Code and other State, local and national codes as are applicable. The cost of all required inspections and permits shall be the responsibility of Contractor and included within the bid proposal. All water taps, meter barrels, vaults and impact fees shall be paid by Contractor unless otherwise noted.

ARTICLE 6 - PROTECTION OF WORK, PROPERTY AND THE PUBLIC

- a. Contractor shall be jointly responsible for the entire site and the building or construction of the same and provide all the necessary protections, as required by the owner or designer, and by laws or ordinances governing such conditions. They shall be responsible for any damage to the owner's property, or of that of others on the job, by them, their personnel, or their subcontractors, and shall make good such damages. They shall be responsible for and pay for any damages caused to the owner. All Contractors shall have access to the project at all times.
- b. Contractor shall provide cover and protect all portions of the structure when the work is not in progress, provide and set all temporary roofs, covers for doorways, sash and windows, and all other materials necessary to protect all the work on the building, whether set by him, or any of

the subcontractors. Any work damaged through the lack of proper protection or from any other cause, shall be repaired or replaced without extra cost to the owner.

- c. No fires of any kind will be allowed inside or around the operations during the course of construction without special permission from the designer and owner.
- d. Contractor shall protect all trees and shrubs designated to remain in the vicinity of the operations by building substantial boxes around same. He shall barricade all walks, roads, etc., as directed by the designer to keep the public away from the construction. All trenches, excavations or other hazards in the vicinity of the work shall be well barricaded and properly lighted at night.
- e. Contractor shall provide all necessary safety measures for the protection of all persons on the job, including the requirements of the A.G.C. *Accident Prevention Manual in Construction*, as amended, and shall fully comply with all state laws or regulations and North Carolina State Building Code requirements to prevent accident or injury to persons on or about the location of the work. He shall clearly mark or post signs warning of hazards existing, and shall barricade excavations, elevator shafts, stairwells and similar hazards. He shall protect against damage or injury resulting from falling materials and he shall maintain all protective devices and signs throughout the progress of the work.
- f. Contractor shall adhere to the rules, regulations and interpretations of the North Carolina Department of Labor relating to Occupational Safety and Health Standards for the Construction Industry (Title 29, Code of Federal Regulations, Part 1926, published in Volume 39, Number 122, Part II, June 24, 1974, *Federal Register*), and revisions thereto as adopted by General Statutes of North Carolina 95-126 through 155.
- g. Contractor shall designate a responsible person of his organization as safety officer/inspector to inspect the project site for unsafe health and safety hazards, to report these hazards to Contractor for correction, and whose duties also include accident prevention on the project, and to provide other safety and health measures on the project site as required by the terms and conditions of the contract. The name of the safety inspector shall be made known to the designer and owner at the time of the project walkthrough conference and in all cases prior to any work starting on the project.
- h. In the event of emergency affecting the safety of life, the protection of work, or the safety of adjoining properties, Contractor is hereby authorized to act at his own discretion, without further authorization from anyone, to prevent such threatened injury or damage. Any compensation claimed by Contractor on account of such action shall be determined as provided for under Article 19(b).
- i. Any and all costs associated with correcting damage caused to adjacent properties of the construction site or staging area shall be borne by Contractor. These costs shall include but not be limited to flooding, mud, sand, stone, debris, and discharging of waste products.

ARTICLE 7 - SEDIMENTATION POLLUTION CONTROL ACT OF 1973

- a. Any land-disturbing activity performed by Contractor(s) in connection with the project shall comply with all erosion control measures set forth in the contract documents and any additional measures which may be required in order to ensure that the project is in full compliance with the Sedimentation Pollution Control Act of 1973, as implemented by Title 15, North Carolina Administrative Code, Chapter 4, Sedimentation Control, Subchapters 4A, 4B and 4C, as amended (15 N.C.A.C. 4A, 4B and 4C).
- b. Upon receipt of notice that a land-disturbing activity is in violation of said act, Contractor(s)

shall be responsible for ensuring that all steps or actions necessary to bring the project in compliance with said act are promptly taken.

- c. Contractor(s) shall be responsible for defending any legal actions instituted pursuant to N.C.G.S. 113A-64 against any party or persons described in this article.
- d. To the fullest extent permitted by law, Contractor(s) shall indemnify and hold harmless the owner, the designer and the agents, consultants and employees of the owner and designer, from and against all claims, damages, civil penalties, losses and expenses, including, but not limited to, attorneys' fees, arising out of or resulting from the performance of work or failure of performance of work, provided that any such claim, damage, civil penalty, loss or expense is attributable to a violation of the Sedimentation Pollution Control Act. Such obligation shall not be construed to negate, abridge or otherwise reduced any other right or obligation of indemnity which would otherwise exist as to any party or persons described in this article.

ARTICLE 8 - INSPECTION OF THE WORK

- a. It is a condition of this contract that the work shall be subject to inspection during normal working hours and during any time work is in preparation and progress by Contractor's designer, designated official representatives of CM, AHJ, NCORR, homeowner and those persons required by state law to test special work for official approval. Contractor shall therefore provide safe access to the work at all times for such inspections. Homeowner must give advance notice to Contractor and/or CM to ensure homeowner safety pursuant to OSHA requirements.
- b. Where special inspection or testing is required by virtue of any state or federal laws, instructions of the designer, specifications or codes, the Contractor shall give adequate notice to the designer and CM of the time set for such inspection or test, if the inspection or test will be conducted by a party other than the designer. Such special tests or inspections will be made in the presence of the designer, or his authorized representative, CM (if necessary) and it shall be Contractor's responsibility to serve ample notice of such tests.
- c. All laboratory tests shall be paid by Contractor unless provided otherwise in the contract documents including laboratory tests to establish design mix for concrete, and for additional tests to prove compliance with contract documents where materials have tested deficient except when the testing laboratory did not follow the appropriate ASTM testing procedures.
- d. Should any work be covered up or concealed prior to inspection and approval by AHJ and CM (when required by the contract) and/or special inspector such work shall be uncovered or exposed for inspection, if so requested by AHJ (verbally or in writing) or CM (in writing). Inspection of the work will be made upon notice from the Contractor. All cost involved in uncovering, repairing, replacing, recovering and restoring to design condition, the work that has been covered or concealed will be paid by the Contractor involved.

ARTICLE 9 - CONSTRUCTION SUPERVISION

- a. Contractor shall, employ an engineer or a land surveyor licensed in the State of North Carolina to lay out the work and to establish a bench mark in a location where same will not be disturbed and where direct instruments sights may be taken.

ARTICLE 10 - CONTRACTOR AND SUBCONTRACTOR RELATIONSHIPS

- a. Contractor agrees that the terms of its contract with homeowner documents shall apply equally to each subcontractor as to Contractor, and the Contractor agrees to take such action as may be necessary to bind each subcontractor to these terms. Contractor further agrees to conform to

the Code of Ethical Conduct as adopted by the Associated General Contractors of America, Inc., with respect to Contractor-subcontractor relationships, and that payments to subcontractors shall be made in accordance with the provisions of G.S. 143-134.1 titled Interest on final payments due to Contractors: payments to subcontractors.

- b. Within seven days of receipt by Contractor of each periodic or final payment, Contractor shall pay the subcontractor based on work completed or service provided under the subcontract. Should any periodic or final payment to the subcontractor be delayed by more than seven days after receipt of periodic or final payment by Contractor, Contractor shall pay the subcontractor interest, beginning on the eighth day, at the rate of one percent (1%) per month or fraction thereof on such unpaid balance as may be due. CM and NCORR shall not be liable for interest resulting from Contractor's failure to pay any subcontractor.
- c. NCORR will retain no more than five (5) percent of progress payments from Contractor, which will be release upon final acceptance of the HRP project. Should Contract fail to perform work under the contract, substantially delays completion of the work, or fails to correct non-conforming work in a timely manner, NCORR through CM may use retainage to correct non-conforming work and/or complete performance of the contract. The percentage of retainage on payments made by the Contractor to the subcontractor shall not exceed the percentage of retainage on payments made by NCORR to Contractor. Any percentage of retainage on payments made by Contractor to the subcontractor that exceeds the percentage of retainage on payments made by NCORR to Contractor shall be subject to interest to be paid by Contractor to the subcontractor at the rate of one percent (1%) per month or fraction thereof.
- d. Nothing in this section shall prevent Contractor at the time of application and certification to CM and NCORR from withholding application and certification to NCORR for payment to the subcontractor for unsatisfactory job progress; defective construction not remedied; disputed work; third-party claims filed or reasonable evidence that claim will be filed; failure of subcontractor to make timely payments for labor, equipment and materials; damage to Contractor or another subcontractor; reasonable evidence that subcontract cannot be completed for the unpaid balance of the subcontract sum; or a reasonable amount for retainage not to exceed the initial percentage retained by NCORR.

ARTICLE 11 - CHANGES IN THE WORK

- a. NCORR through CM may make changes made in the work covered by the contract. These changes will not invalidate and will not relieve or release Contractor from any guarantee given by it pertinent to the contract provisions. These changes will not affect the validity of the guarantee bond and will not relieve the surety or sureties of said bond. All extra work shall be executed under conditions of the original contract.
- b. Except in an emergency endangering life or property, no change shall be made by Contractor except upon receipt of approved change order or written field order from CM authorizing such change. No claim for adjustments of the contract price shall be valid unless this procedure is followed.

A field order, transmitted by fax, electronically, or hand delivered, may be used where the change involved impacts the critical path of the work. A formal change order shall be issued as expeditiously as possible.

In the event of emergency endangering life or property, Contractor may be directed to proceed on a time and material basis whereupon Contractor shall proceed and keep accurately on such form as specified by CM and/or NCORR, a correct account of costs together with all proper invoices, payrolls and supporting data. Upon completion of the work the change order will be

prepared as outlined under either Method "c(1)" or Method "c(2)" or both.

- c. In determining the values of changes, either additive or deductive, Contractors are restricted to the use of the following methods:
1. Where the extra work involved is covered by unit prices quoted in the proposal, or subsequently agreed to by Contractor, CM and NCORR the value of the change shall be computed by application of unit prices based on quantities, estimated or actual as agreed of the items involved, except in such cases where a quantity exceeds the estimated quantity allowance in the contract by one hundred percent (100%) or more. In such cases, either party may elect to proceed under subparagraph c2 herein. If neither party elects to proceed under c2, then unit prices shall apply.
 2. The contracting parties shall negotiate and agree upon the equitable value of the change prior to issuance of the change order, and the change order shall stipulate the corresponding lump sum adjustment to the contract price.
- d. The term "net cost" as used herein shall mean the difference between all proper cost additions and deductions. The "cost" as used herein shall be limited to the following:
1. The actual costs of materials and supplies incorporated or consumed as part of the work;
 2. The actual costs of labor expended on the project site; labor expended in coordination, change order negotiation, record document maintenance, shop drawing revision or other tasks necessary to the administration of the project are considered overhead whether they take place in an office or on the project site.
 3. The actual costs of labor burden, limited to the costs of social security (FICA) and Medicare/Medicaid taxes; unemployment insurance costs; health/dental/vision insurance premiums; paid employee leave for holidays, vacation, sick leave, and/or petty leave, not to exceed a total of 30 days per year; retirement contributions; worker's compensation insurance premiums; and the costs of general liability insurance when premiums are computed based on payroll amounts; the total of which shall not exceed thirty percent (30%) of the actual costs of labor;
 4. The actual costs of rental for tools, excluding hand tools; equipment; machinery; and temporary facilities required for the work;
 5. All labor costs must comply with federal prevailing wage laws;
 6. The actual costs of premiums for bonds, insurance, permit fees, and sales or use taxes related to the work.
- Overtime and extra pay for holidays and weekends may be a cost item only to the extent approved by CM and NCORR.
- e. Should concealed conditions be encountered in the performance of the work below grade, or should concealed or unknown conditions in an existing structure be at variance with the conditions indicated by the contract documents, the contract sum and time for completion may be equitably adjusted by change order upon claim by either party made within thirty (30) days after the condition has been identified. The cost of such change shall be arrived at by one of the foregoing methods. All change orders shall be supported by a unit cost breakdown showing

method of arriving at net cost as defined above.

- f. In all change orders, the procedure will be for the contractor to submit proposals to the CM through the State's System of Record. CM shall verify correctness. Delay in the processing of the change order due to lack of proper submittal by Contractor of all required supporting data shall not constitute grounds for a time extension or basis of a claim. Within fourteen (14) days after receipt of Contractor's accepted proposal including all supporting documentation required by CM, CM shall prepare the change order and forward to Contractor for signature or otherwise respond, in writing, to Contractor's proposal. Within seven (7) days after receipt of the change order executed by Contractor, CM's representative shall certify the change order by his or her signature, and forward the change order and all supporting data to NCORR for its review for CDBG-DR, HRP and/or grant eligibility compliance and, if compliant, NCORR will sign the change order and the revised scope of work may proceed. If the change order is denied, then Contractor shall not proceed with the work or may request the homeowner to approve of and pay for the proposed change in work.
- g. At the time of signing a change order, Contractor shall be required to certify as follows:

"I certify that my bonding company will be notified forthwith that my contract has been changed by the amount of this change order, and that a copy of the approved change order will be mailed upon receipt by me to my surety."
- h. A change order, when issued, shall be full compensation, or credit, for the work included, omitted or substituted. It shall show on its face the adjustment in time for completion of the project as a result of the change in the work.

ARTICLE 12 - TIME OF COMPLETION, DELAYS, EXTENSION OF TIME

- a. Contractor shall commence work to be performed under this agreement on a date to be specified in a written Notice to Proceed from CM and shall fully complete all work hereunder within the time of completion stated in the Contract. Time is of the essence and Contractor acknowledges the homeowner will likely suffer financial damage for failure to complete the work within the time of completion. For each day in excess of the above number of days, Contractor(s) shall pay the homeowner the sum of \$250.00 per day as liquidated damages reasonably estimated in advance to cover the losses to be incurred by the owner by reason of failure of said Contractor(s) to complete the work within the time specified, such time being in the essence of this contract and a material consideration thereof. If Contractor disputes the calculation of liquidated damages, then homeowner may recover actual damages.
- b. If Contractor is delayed at any time in the progress of his work solely by any act or negligence of the homeowner, CM or NCORR; by changes ordered in the work; by labor disputes at the project site; by abnormal weather conditions not reasonably anticipated for the locality where the work is performed; by unavoidable casualties; by any causes beyond Contractor's control; or by any other causes which the designer and owner determine may justify the delay, then the contract time may be extended by change order only for the time which CM and NCORR may determine is reasonable.

Time extensions will not be granted for rain, wind, snow or other natural phenomena of normal intensity for the locality where work is performed. For purpose of determining extent of delay attributable to unusual weather phenomena, a determination shall be made by comparing the weather for the contract period involved with the average of the preceding five (5) year climatic

range during the same time interval based on the National Oceanic and Atmospheric Administration National Weather Service statistics for the locality where work is performed and on daily weather logs kept on the job site by Contractor reflecting the effect of the weather on progress of the work and initialed by the designer's representative. No weather delays shall be considered after the building is dried in unless work claimed to be delayed is on the critical path of the baseline schedule or approved updated schedule. Time extensions for weather delays, acts of God, labor disputes, fire, delays in transportation, unavoidable casualties or other delays which are beyond the control of the Owner do not entitle Contractor to compensable damages for delays. Any Contractor claim for compensable damages for delays is limited to delays caused solely by the owner or its agents. Contractor caused delays shall be accounted for before owner or designer caused delays in the case of concurrent delays.

- c. Request for extension of time shall be made in writing to CM, copies to NCORR and the homeowner, within twenty (20) days following cause of delay.
- d. Contractor shall notify his surety in writing of extension of time granted.

ARTICLE 13 – APPLICATIONS FOR PAYMENT

- a. Contractor shall submit, as set by Contract, to CM and NCORR a request for payment for work performed. The request shall be in the form agreed upon between Contractor and CM, but shall show substantially the value of work done and materials delivered to the site during the period since the last payment, and shall sum up the financial status of the contract with the following information:
 - 1. Total of contract including change orders.
 - 2. Value of work completed to date.
 - 3. Less five percent (5%) retainage based on the submittal of the Final Housing Inspection and Lien Release
 - 4. Less previous payments.
 - 5. Current amount due.
- b. Contractor, upon request of CM, shall substantiate the request with invoices of vouchers or payrolls or other evidence including compliance with federal prevailing wage laws.
- c. Prior to submitting the first request, Contractor shall prepare for CM a SOV showing a breakdown of the contract price into values of the various parts of the work, so arranged as to facilitate payments to Contractor and subcontractors. Contractor shall list the value of each subcontractor and supplier, identifying each minority business subcontractor and supplier.
- d. When payment is made on account of stored materials and equipment, such materials must be stored on the homeowner's property, and the requests for payments shall be accompanied by invoices or bills of sale or other evidence to establish the homeowner's title to such materials and equipment. Such payments will be made only for materials that have been customized or fabricated specifically for this project. Raw materials or commodity products including but not limited to piping, conduit, CMU, metal studs and gypsum board may not be submitted. Responsibility for such stored materials and equipment shall remain with Contractor regardless of ownership title. Such stored materials and equipment shall not be removed from the homeowner's property.

ARTICLE 14 - CERTIFICATES OF PAYMENT AND FINAL PAYMENT

- a. Within five (5) days from receipt of request for payment from Contractor (or other date set by Contractor, CM and NCORR), Contractor shall issue and forward to CM a Final Housing Inspection and Lien Release. This release shall indicate the amount requested by Contractor. If the release is not approved by CM, CM shall state in writing to Contractor and the owner the reasons for withholding payment.
- b. No release issued or payment made shall constitute an acceptance of the work or any part thereof until issuance of a certificate of occupancy issued by AHJ, and until CM and NCORR closeout the contract (warranties and guarantees shall remain in effect after contract closeout). The making and acceptance of final payment shall constitute a waiver of all claims by Contractor against the homeowner, CM and/or NCORR except:
 1. Claims arising from unsettled liens or claims against Contractor.
 2. Faulty work or materials appearing after final payment.
 3. Failure of Contractor to perform the work in accordance with drawings and specifications, such failure appearing after payment.
 4. As conditioned in the performance bond and payment bond.
- c. Contractor shall forward to CM and NCORR the final application for payment along with the following documents:
 1. List of minority business subcontractors and material suppliers showing breakdown of contract amounts and total actual payments to subs and material suppliers.
 2. Affidavit of Release of Liens and Final Housing Inspection and Lien Release.
 3. Affidavit of contractors of payment to material suppliers and subcontractors.
 4. Consent of Surety to Final Payment.
 5. Certificates of state agencies required by state law.

ARTICLE 15 - PAYMENTS WITHHELD

- a. CM with the approval of State Construction Office and NCORR may withhold payment for the following reasons:
 1. Faulty work not corrected.
 2. The unpaid balance on the contract is insufficient to complete the work in the judgment of the designer.
 3. To provide for sufficient contract balance to cover liquidated damages that will be assessed.
- b. When grounds for withholding payments have been removed, payment will be released.

ARTICLE 16 - MINIMUM INSURANCE REQUIREMENTS

CM shall require Contractor to have the same insurance types, coverages and limits required of CM

with the same terms and conditions regarding proof insurance. In addition CM shall require Contractor to provide the following additional insurance:

a. Property Insurance (Builder's Risk/Installation Floater)

Contractor shall purchase and maintain property insurance until final acceptance, upon the entire work at the site to the full insurable value thereof. This insurance shall include the interests of the owner, Contractor, the subcontractors and sub-subcontractors in the work and shall insure against the perils of fire, wind, rain, flood, extended coverage, and vandalism and malicious mischief. If the owner is damaged by failure of Contractor to purchase or maintain such insurance, then Contractor shall bear all reasonable costs properly attributable thereto; Contractor shall effect and maintain similar property insurance on portions of the work stored off the site when request for payment per articles so includes such portions.

b. Deductible

Any deductible, if applicable to loss covered by insurance provided, is to be borne by Contractor.

ARTICLE 17 - PERFORMANCE BOND AND PAYMENT BOND

- a. NCORR will direct the CM to withhold retainage as per state statutory requirements. CM shall require each Contractor to furnish a payment bond executed by a surety company authorized to do business in North Carolina. The bonds shall be in the full contract amount. Bonds shall be executed in the form bound with these specifications.
- b. All bonds shall be countersigned by an authorized agent of the bonding company who is licensed to do business in North Carolina.

ARTICLE 18 - CONTRACTOR'S AFFIDAVIT

The final payment of retained amount due the Contractor on account of the contract shall not become due until Contractor has furnished to CM, NCORR and homeowner an affidavit signed, sworn and notarized to the effect that all payments for materials, services or subcontracted work in connection with his contract have been satisfied, and that no claims or liens exist against Contractor in connection with this contract. In the event that Contractor cannot obtain similar affidavits from subcontractors to protect Contractor and the Owner from possible liens or claims against the subcontractor, Contractor shall state in his affidavit that no claims or liens exist against any subcontractor to the best of his (Contractor's) knowledge, and if any appear afterward, Contractor shall save the owner harmless.

ARTICLE 19 - USE OF PREMISES

- a. Contractor shall confine its equipment, the storage of materials and the operations of its workmen to limits indicated by law, ordinances, permits or directions of AHJ, CM, NCORR and homeowner and shall not exceed those established limits in his operations.
- b. Contractor(s) shall not load or permit any part of the structure to be loaded with a weight that will endanger its safety.
- c. Contractor(s) shall enforce CM's, NCORR's and homeowner's instructions regarding signs, advertisements, fires and smoking.
- d. No firearms, any type of alcoholic beverages, or drugs (other than those prescribed by a

physician) will be permitted at the job site.

ARTICLE 20 - CUTTING, PATCHING AND DIGGING

- a. Contractor shall do all cutting, fitting or patching of his work that may be required to make its several parts come together properly and fit it to receive or be received by work of other Contractors shown upon or reasonably implied by the drawings and specifications for the completed structure, as the designer may direct.
- b. Any cost brought about by defective or ill-timed work shall be borne by the party responsible therefor.
- c. No Contractor or subcontractor shall endanger any work of Contractor or subcontractor by cutting, digging or other means. No Contractor shall cut or alter the work of any other Contractor without the consent of the designer and the affected Contractor(s).

ARTICLE 21 - UTILITIES, STRUCTURES, SIGNS

- a. For reconstruction work, Contractor shall provide necessary and adequate facilities for water, electricity, gas, oil, sewer and other utility services which may be necessary and required for completion of the project including all utilities required for testing, cleaning, balancing, and sterilization of designated plumbing, mechanical and electrical systems. Any permanent meters installed shall be listed in the Contractor's name until work has a final acceptance. Contractor will be solely responsible for all utility costs prior to final acceptance. Contractor shall contact all affected utility companies prior to bid to determine their requirements to provide temporary and permanent service and include all costs associated with providing those services in their bid. Coordination of the work of the utility companies during construction is the sole responsibility of Contractor. For rehabilitation work, Contractor shall provide all the foregoing if the home will be unoccupied during construction. If occupied, CM, Contractor and homeowner will have to reach an agreement as to apportionment of utilities, which must be included in the contract before rehabilitation starts.
- b. Meters shall be relisted in the homeowner's name on the day following final acceptance, and the homeowner shall pay for services used after that date.

ARTICLE 22 - CLEANING UP

- a. Contractor shall keep the building and surrounding area reasonably free from rubbish at all times, and shall remove debris from the site on a timely basis or when directed to do so by the designer or CM. Contractor shall provide an onsite refuse container(s) for the use of all contractors. Contractor shall ensure removal of rubbish and debris from the building on a daily basis. Contractor shall broom clean the building as required to minimize dust and dirt accumulation.
- b. Contractor shall provide and maintain suitable all-weather access to the building.
- c. Before final inspection and acceptance of the building, each contractor shall clean his portion of the work, including glass, hardware, fixtures, masonry, tile and marble (using no acid), clean and wax all floors as specified, and completely prepare the building for use by the homeowner, with no cleaning required by the homeowner.

ARTICLE 23 - GUARANTEE

- a. Contractor shall unconditionally guarantee materials and workmanship against patent defects arising from faulty materials, faulty workmanship or negligence for a period of twelve (12)

months following the date of final acceptance of the work or beneficial occupancy and shall replace such defective materials or workmanship without cost to the owner.

- b. Where items of equipment or material carry a manufacturer's warranty for any period in excess of twelve (12) months, then the manufacturer's warranty shall apply for that particular piece of equipment or material. Contractor shall replace such defective equipment or materials, without cost to the owner, within the manufacturer's warranty period.
- c. Additionally, the homeowner may bring an action for latent defects caused by the negligence of Contractor which is hidden or not readily apparent to the homeowner or CM at the time of final acceptance, whichever occurred first, in accordance with applicable law.
- d. Guarantees for roof, equipment, materials, and supplies shall be stipulated in the specifications sections governing such roof, equipment, materials, or supplies.

ARTICLE 24 - MINORITY BUSINESS PARTICIPATION

GS 143-128.2 establishes a ten percent (10%) goal for participation by minority businesses in total value of work for each State building project. The document, *Guidelines for Recruitment and Selection of Minority Businesses for Participation in State Construction Contracts* including Affidavits and Appendix E are hereby incorporated into and made a part of this contract.

ARTICLE 25 – CONTRACTOR EVALUATION

Contractor's overall work performance on the project shall be fairly evaluated in accordance with the the performance matrix used by the CM for determining future allocation of work under the HRP Program. The document, Contractor Evaluation Procedures, is hereby incorporated and made a part of this contract. The owner may request Contractor's comments to evaluate the designer. CM and NCORR will evaluate Contractor's performance.

ARTICLE 26 – GIFTS

Pursuant to N.C. Gen. Stat. § 133-32, it is unlawful for any vendor or contractor (i.e. architect, bidder, contractor, construction manager, design professional, engineer, subcontractor, supplier, vendor, etc.), to make gifts or to give favors to any State employee. This prohibition covers those vendors and contractors who: (1) have a contract with a governmental agency; or (2) have performed under such a contract within the past year; or (3) anticipate bidding on such a contract in the future. For additional information regarding the specific requirements and exemptions, vendors and contractors are encouraged to review G.S. Sec. 133-32.

During the construction of the Project, CM, Contractor and subcontractors are prohibited from making gifts to any employees of NCORR, and/or any other State employee from any other State Agency that may have any involvement, influence, responsibilities, oversight, management and/or duties that pertain to and/or relate to the contract administration, financial administration and/or disposition of claims arising from and/or relating to the Contract and/or Project.

ARTICLE 27 – AUDITING-ACCESS TO PERSONS AND RECORDS

In accordance with N.C. General Statute 147-64.7, the State Auditor shall have access to CM's and Contractor's officers, employees, agents and/or other persons in control of and/or responsible for the Contractor's records that relate to this Contracts for purposes of conducting audits under the referenced statute. NCORR's internal auditors shall also have the right to access and copy CM's and Contractor's records relating to the Contract and Project during the term of the Contract and within two years following the completion of the Project/close-out of the Contract to verify

accounts, accuracy, information, calculations and/or data affecting and/or relating to CM's and Contractor's requests for payment, requests for change orders, change orders, claims for extra work, requests for time extensions and related claims for delay/extended general conditions costs, claims for lost productivity, claims for loss efficiency, claims for idle equipment or labor, claims for price/cost escalation, pass-through claims of subcontractors and/or suppliers, and/or any other type of claim for payment or damages from CM, NCORR and/or homeowner.-

ARTICLE 28 – NORTH CAROLINA FALSE CLAIMS ACT

The North Carolina False Claims Act ("NCFCA"), N.C Gen. Stat. § 1-605 through 1-618, applies to this Contract. Contractor should familiarize itself with the entire NCFCA and should seek the assistance of an attorney if it has any questions regarding the NCFCA and its applicability to any requests, demands and/or claims for payment its submits to the State through the contracting state agency, institution, university or community college.

The purpose of the NCFCA "is to deter persons from knowingly causing or assisting in causing the State to pay claims that are false or fraudulent and to provide remedies in the form of treble damages and civil penalties when money is obtained from the State by reason of a false or fraudulent claim." (Section 1-605(b).) Contractor's liability under the NCFCA may arise from, but is not limited to: requests for payment, invoices, billing, claims for extra work, requests for change orders, requests for time extensions, claims for delay damages/extended general conditions costs, claims for loss productivity, claims for loss efficiency, claims for idle equipment or labor, claims for price/cost escalation, pass-through claims of subcontractors and/or suppliers, documentation used to support any of the foregoing requests or claims, and/or any other request for payment from the State through the contracting state agency, institution, university or community college. The parts of the NCFCA that are most likely to be enforced with respect to this type of contract are as follows:-

- A "claim" is "[a]ny request or demand, whether under a contract or otherwise, for money or property and whether or not the State has title to the money or property that (i) is presented to an officer, employee, or agent of the State or (ii) is made to a contractor ... if the money or property is to be spent or used on the State's behalf or to advance a State program or interest and if the State government: (a) provides or has provided any portion of the money or property that is requested or demanded; or (b) will reimburse such contractor ... for any portion of the money or property which is requested or demanded." (Section 1-606(2).)
- "Knowing" and "knowingly" – Whenever a person, with respect to information, does any of the following: (a) Has actual knowledge of the information; (b) Acts in deliberate ignorance of the truth or falsity of the information; and/or (c) Acts in reckless disregard of the truth or falsity of the information. (Section 1-606(4).) Proof of specific intent to defraud is not required. (Section 1-606(4).)
- "Material" means having a natural tendency to influence, or be capable of influencing, the payment or receipt of money or property. (Section 1-606(4).)
- Liability. – "Any person who commits any of the following acts shall be liable to the State for three times the amount of damages that the State sustains because of the act of that person[:] ... (1) Knowingly presents or causes to be presented a false or fraudulent claim for payment or approval. (2) Knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim. (3) Conspires to commit a violation of subdivision (1), (2) ..." (Section 1-607(a)(1), (2).)
- The NCFCA shall be interpreted and construed so as to be consistent with the federal False Claims Act, 31 U.S.C. § 3729, et seq., and any subsequent amendments to that act. (Section 1-616(c).)

Finally, the contracting state agency, institution, university or community college may refer any

suspected violation of the NCFCA by Contractor to the Attorney General's Office for investigation. Under Section 1-608(a), the Attorney General is responsible for investigating any violation of NCFCA, and may bring a civil action against the Contractor under the NCFCA. The Attorney General's investigation and any civil action relating thereto are independent and not subject to any dispute resolution provision set forth in this Contract. (See Section 1-608(a).)

ATTACHMENT I**CONSTRUCTION MANAGER PRICE OFFER**

Phase 1. This phase includes delivery of Scope of Work until the completion of Initial Milestones outlined in Section 5.1.1):

Title of Personnel (e.g. Program Manager, Inspector)	Estimated Hours of Effort per Month	Hourly Rate (in dollars)	Estimate Cost of Title per Month (in dollars)
Monthly Totals		n/a	

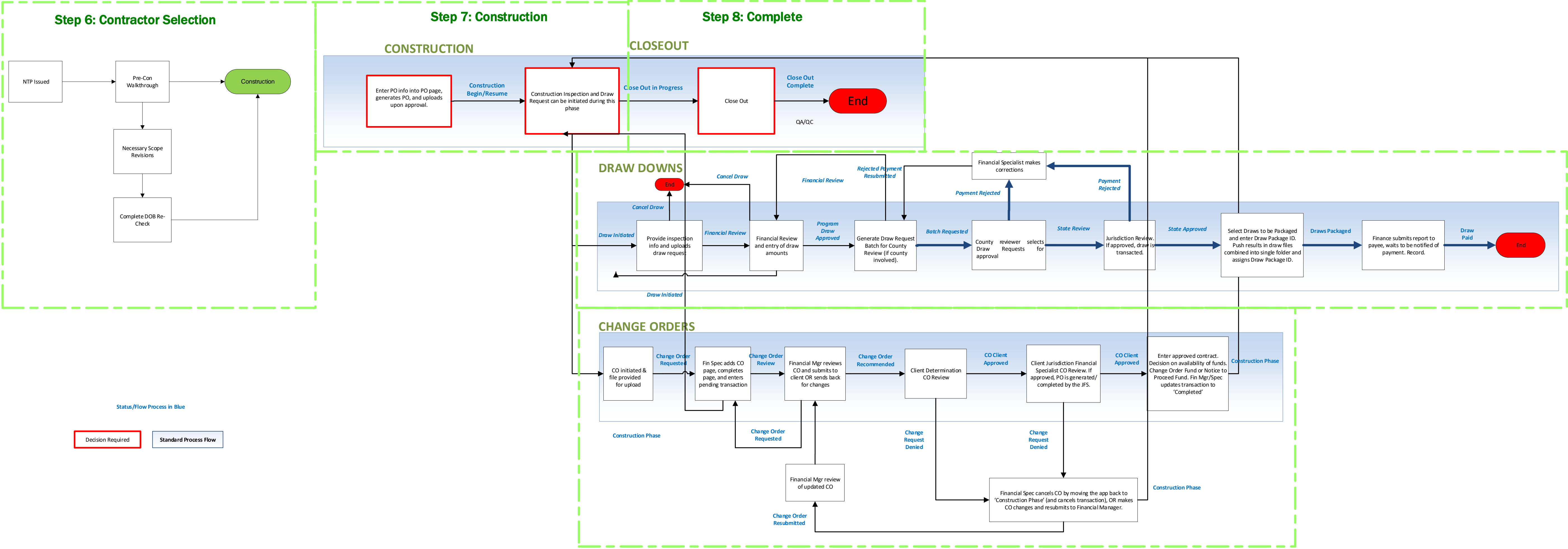
* Estimated total cost for all titles shall be the monthly not-to-exceed contract price, subject to any negotiations between the State and the awarded Offeror.

Phase 2. This phase includes delivery of Scope of Work after the completion of Initial Milestones outlined in Section 5.1.1):

Title of Personnel (e.g. Program Manager, Inspector)	Estimated Hours of Effort per Month	Hourly Rate (in dollars)	Estimate Cost of Title per Month (in dollars)
Monthly Totals		n/a	

* Estimated total cost for all titles shall be the monthly not-to-exceed contract price, subject to any negotiations between the State and the awarded Offeror.

ReBUILD NC Program Process Flow: Steps 6 through 8



Invoice #:	Invoice Date:	Invoice Period:	Vendor Contact:
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